

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Application for Certification	)	Docket No.
for the East Altamont Energy	)	01-AFC-4
Center	)	
_____	)	

TRACY ELKS LODGE # 2031  
6400 11TH STREET  
TRACY, CALIFORNIA

MONDAY, OCTOBER 21, 2002  
10:21 a.m.

Reported by:  
Valorie Phillips  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

Robert Pernell, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Major Williams, Jr., Hearing Officer

Al Garcia, Advisor

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Cheri Davis, Project Manager

Obed Odoemelam

Tuan Ngo

Michael Ringer

Matthew Layton

Eileen Allen

APPLICANT

Greggory L. Wheatland, Attorney

Jeffery Harris, Attorney

Ellison, Schneider and Harris

Steven A. DeYoung, Environmental Project Manager  
Calpine Corporation

Alicia Torre, Manager, Project Development  
Consultant

Valerie Young  
CH2M HILL

Susan Strachan, Project Manager  
Strachan Consulting

Gary S. Rubenstein  
Sierra Research

APPLICANT

Thomas Priestley  
CH2M HILL

INTERVENORS

Robert Sarvey

Michael Boyd  
Californians for Renewable Energy

ALSO PRESENT

Adolph Martinelli, Agency Director  
Alameda County Community Development Agency

Ed Francioso  
Steve Hill  
Modesto Irrigation District

Dave Swanson  
Krishna A. Shah, Project Manager  
Western Area Power Administration

Dennis T. Jang  
Bay Area Air Quality Management District

Jim Swaney  
San Joaquin Valley Unified Air Pollution Control  
District

Dick Schneider.  
Co-Author, Measure D  
Sierra Club

Nick Papadakos, Director  
Byron Municipal Advisory Council

Paula Buenavista  
Susan Sarvey  
Clean Air for Citizens and Legal Equity (CACKLE)

Kathy Leighton

Gene Leschinsky

ALSO PRESENT

Temple Campbell

Ron Robinson

Gail Mercer

Northern California Electrical Construction  
Industry

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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## P R O C E E D I N G S

10:21 a.m.

PRESIDING MEMBER KEESE: Good morning.

We'll reconvene our hearings on the East Altamont Energy Center, 01-AFC-4. And before we get started once again, why don't we have the parties identify themselves.

Mr. Wheatland for the applicant.

MR. WHEATLAND: Yes, good morning. I'm Gregg Wheatland; I'm the attorney for the applicant.

MR. DeYOUNG: I'm Steve DeYoung, Co-Environmental Manager for the applicant.

MS. TORRE: I'm Alicia Torre, Project Development Manager for the applicant.

MS. STRACHAN: I'm Susan Strachan, the other Environmental Project Manager.

PRESIDING MEMBER KEESE: Thank you. Staff, Ms. DeCarlo.

MS. DeCARLO: Hello, my name is Lisa DeCarlo; I'm Staff Counsel for the California Energy Commission. To my left is Cheri Davis, Project Manager. To my right is Eileen Allen, Land Use Analyst. And to my far right is Adolph Martinelli from Alameda County.

1                   PRESIDING MEMBER KEESE: Thank you.

2           Western, Mr. Swanson, is here?

3                   MR. SWANSON: Yes.

4                   PRESIDING MEMBER KEESE: Representing  
5           Western.

6                   MR. SWANSON: And Krishna Shah, also,  
7           from Western's Office.

8                   PRESIDING MEMBER KEESE: Can you spell  
9           that for the --

10                  MR. SHAH: Yeah, last name is  
11           S-h-a-h. K-r-i-s-h-n-a.

12                  PRESIDING MEMBER KEESE: Thank you. Do  
13           we have a representative from the San Joaquin Air  
14           District?

15                  MR. SWANEY: Yes, Jim Swaney, Permit  
16           Services Manager.

17                  PRESIDING MEMBER KEESE: Thank you, Mr.  
18           Swaney.

19                  Is CURE represented? Seeing not.

20                  Is CARE represented? Mr. Boyd has  
21           informed the Hearing Officer he will be here  
22           tonight at 6:00, so there's an incentive for  
23           everybody.

24                  Mr. Robert Sarvey.

25                  MR. SARVEY: Bob Sarvey representing my

1 family. And Dick Schneider, Co-author of Measure  
2 D, my land use witness.

3 PRESIDING MEMBER KEESE: Thank you. The  
4 Bay Area District.

5 MR. JANG: Yeah, Dennis Jang.

6 PRESIDING MEMBER KEESE: Mr. Jang, good  
7 morning. Byron Bethany. Department of Water  
8 Resources. Now, I do believe we have a  
9 representative of Modesto Irrigation District  
10 here.

11 MR. HILL: I'm here, but --

12 PRESIDING MEMBER KEESE: Well, would you  
13 just identify yourself for the record.

14 MR. HILL: Steve Hill with Modesto  
15 Irrigation District. Ed Francioso will be here  
16 later.

17 PRESIDING MEMBER KEESE: Once more?

18 MR. HILL: Steve Hill --

19 PRESIDING MEMBER KEESE: Steve Hill.

20 MR. HILL: -- and Ed Francioso will be  
21 coming later.

22 PRESIDING MEMBER KEESE: Okay. Any  
23 other agencies represented? Unfortunately, I  
24 jumped into it without introducing ourselves.

25 I'm Bill Keese, Chairing this Committee.

1 Robert Pernel is my Association to my left. Al  
2 Garcia, his Advisor, is here. Mr. Tomashefsky  
3 will not be joining us. Major Williams will be  
4 conducting the hearing.

5 We have some preliminary matters to go  
6 over. Ms. Mendonca is not here, our Public  
7 Adviser. So, if there are any members of the  
8 public who have questions regarding the  
9 proceeding, see --

10 HEARING OFFICER WILLIAMS: You can see  
11 me during a break, or as I understand it, there  
12 are some folks here from the general public who  
13 wish to address the Committee. And there's been a  
14 request that we do that after the land use  
15 presentation to allow those folks to get back to  
16 work.

17 Could those people identify themselves  
18 now? Could you come up to the mike, ma'am, and  
19 state your name. Anybody else here from the  
20 general public who's got to get back to work,  
21 or --

22 MS. MERCER: I'm here for the day; I  
23 don't have to get back to work.

24 HEARING OFFICER WILLIAMS: Great. Could  
25 you just identify yourself for the record.

1 MS. MERCER: My name is Gail Mercer,  
2 G-a-i-l M-e-r-c-e-r. I'm with the Northern  
3 California Electrical Construction Industry.

4 HEARING OFFICER WILLIAMS: Thank you.  
5 Any other members of the public? Again, if you  
6 could just get my attention during one of the  
7 breaks or come forward at the end of the land use  
8 presentation to make your comments, that will be  
9 the procedure we'll follow in the absence of our  
10 Public Adviser today.

11 The first order of business is motions  
12 and objections. I believe the Committee has taken  
13 up and resolved all outstanding motions or  
14 objections. Is that the parties' agreement at  
15 this time? Is that the parties' understanding,  
16 I'm sorry, at this time that there are no motions  
17 or objections that they need to resolve at this  
18 point?

19 MR. WHEATLAND: Yes.

20 MR. SARVEY: I believe we still have a  
21 biological objection as far as entering Shawn  
22 Smallwood's testimony into the record.

23 HEARING OFFICER WILLIAMS: Okay, we'll  
24 get there.

25 MR. SARVEY: Okay.

1           HEARING OFFICER WILLIAMS: We'll get  
2           there. Just let me say the evidentiary hearings  
3           are formal in nature, similar to court  
4           proceedings. The purpose of the hearings is to  
5           receive evidence, including testimony; and to  
6           establish the factual record necessary to reach a  
7           decision in this case.

8           Applicant has the burden of presenting  
9           sufficient substantial evidence to support the  
10          findings and conclusions required for  
11          certification of the proposed facility.

12          Today, again, all of our topics are  
13          contested, and we will hear them as set forth in  
14          our topic schedule that was previously  
15          distributed.

16          I also have an updated exhibit list  
17          that's being copied, so the parties should be  
18          given that momentarily. So you can follow along  
19          with what we've introduced and what's pending in  
20          terms of our exhibits.

21          Witnesses will testify under oath or  
22          affirmation. During the hearings a party  
23          sponsoring a witness shall establish the witness'  
24          qualifications to the extent that the matter is  
25          not stipulated to, and ask the witness to

1 summarize the prepared testimony.

2 Relevant exhibits should be offered into  
3 evidence at that time. At the conclusion of a  
4 witness' direct testimony the sponsoring party  
5 should move in all relevant exhibits to be  
6 received into evidence.

7 The Committee will next provide the  
8 parties an opportunity for cross-examination,  
9 followed by redirect and recross-examination as  
10 appropriate. Multiple witnesses may testify as a  
11 panel. The Committee may also question the  
12 witnesses.

13 Upon conclusion of each topic we will  
14 invite members of the public to offer unsworn  
15 public comment. Public comment is not testimony,  
16 and a Committee finding cannot be based solely on  
17 such comments. However, public comment may use to  
18 explain evidence in the record.

19 The order of presentations on testimony  
20 throughout the day will be taken as follows:  
21 applicant, staff, the San Joaquin Valley Unified  
22 Air Pollution Control District on air quality, Mr.  
23 Sarvey and CARE through Mr. Boyd, when he appears.

24 Okay, we're going to get into the  
25 housekeeping matters that we have pending from

1 previous days' hearings.

2 Staff has provided a copy, a signed copy  
3 of the water services agreement between BBID and  
4 Mountain House Community Services District. That  
5 was staff exhibit 1H, and we left it that staff  
6 would, I think, provide a complete copy. Is that  
7 where we left it, staff?

8 MS. DeCARLO: I'm sorry?

9 HEARING OFFICER WILLIAMS: You were  
10 going to provide a complete copy of this agreement  
11 between BBID and Mountain House. And this is it,  
12 I take it?

13 MS. DeCARLO: Yes, it is, and we agreed  
14 to leave the record open to allow for this.

15 HEARING OFFICER WILLIAMS: Applicant,  
16 have you seen this?

17 MR. WHEATLAND: No, I haven't seen that  
18 copy, but we have no objection to the introduction  
19 of that.

20 HEARING OFFICER WILLIAMS: Okay. So,  
21 Mr. Sarvey, any objection? Have you seen the  
22 document?

23 MR. SARVEY: No. When was it executed?

24 HEARING OFFICER WILLIAMS: On page 17 it  
25 looks like it was dated 9/7/93.



1 MR. SARVEY: I'd like an opportunity to  
2 look it over before I --

3 HEARING OFFICER WILLIAMS: Okay.

4 MR. SARVEY: -- make any objections  
5 or --

6 HEARING OFFICER WILLIAMS: Staff, was  
7 this docketed?

8 MS. DeCARLO: Not the signed copy. I'm  
9 not sure if another version was.

10 HEARING OFFICER WILLIAMS: Okay, so I  
11 take it that you will be docketing this copy?

12 MS. DeCARLO: Yes.

13 HEARING OFFICER WILLIAMS: Okay. And  
14 we'll put staff's 1H -- we'll leave it for  
15 identification at this time until Mr. Sarvey's had  
16 a chance to review it.

17 Mr. Sarvey, your 6C for identification  
18 was the Sierra Club resolution.

19 MR. SARVEY: Yes, I have it right here.

20 HEARING OFFICER WILLIAMS: Do you have  
21 it? Do you have copies of it for the --

22 MR. SARVEY: I only have two copies, so  
23 we will need to make some copies of it.

24 HEARING OFFICER WILLIAMS: Okay, so  
25 we'll put that over until you've had a chance to

1 make copies of the document and distribute it to  
2 everybody to look at.

3 4B-1 was the amended and restated EAEC  
4 farmland agreement dated September 17, 2002. And  
5 I guess we needed copies. Do you have copies?

6 MS. DeCARLO: It was my understanding  
7 that the applicant was going to provide copies.

8 MR. DeYOUNG: We provided copies last  
9 week.

10 HEARING OFFICER WILLIAMS: Oh, okay. So  
11 that's done.

12 Now, I had a question as to the -- in  
13 the area of noise. I have a note here, the  
14 October 11, 2002 letter from Gary and Dolores Kuhn  
15 on the noise question. It's a two-page letter and  
16 it's addressed to Ms. Alicia Torre.

17 Was this submitted as an exhibit or --

18 MR. WHEATLAND: Which date?

19 HEARING OFFICER WILLIAMS: It's October  
20 11, 2002.

21 MR. WHEATLAND: We have originally  
22 proposed it as an exhibit, but I'm not sure that  
23 there's a number. We will check here to see.

24 HEARING OFFICER WILLIAMS: Okay.

25 MR. WHEATLAND: We would like it to be

1 an exhibit.

2 HEARING OFFICER WILLIAMS: Okay, why  
3 don't you -- can we have these exhibit lists  
4 distributed. Apparently it's 4C-1 --

5 (Pause.)

6 HEARING OFFICER WILLIAMS: Yeah, what we  
7 have in the noise area, which is 4C, we have C-1,  
8 which is the AFC section on noise; we have C-2 --  
9 and you can follow along on your copy of the  
10 exhibit list -- Mrs. Costa's letter. And we've  
11 got C-3, County of Alameda comments on the  
12 proposed project.

13 I don't see that we have this particular  
14 document. Did you want --

15 MR. WHEATLAND: I don't see it, either,  
16 so if we could, please, identify it as the next  
17 exhibit in order.

18 HEARING OFFICER WILLIAMS: Okay, it'll  
19 be C-4.

20 MR. SARVEY: Will we be allowed  
21 questions on that late filing, Mr. Williams?

22 PRESIDING MEMBER KEESE: It was here  
23 before us.

24 HEARING OFFICER WILLIAMS: Yeah.

25 PRESIDING MEMBER KEESE: We discussed

1 both the Costa and this letter. Both letters were  
2 submitted at the same time, just not entered into  
3 the record.

4 HEARING OFFICER WILLIAMS: Yeah, and I  
5 think it's just a matter that we didn't enter it  
6 into the record, because there was extensive  
7 discussion on the Kuhns' agreement, if you recall.  
8 So this is just some more background information  
9 is really all it is. Do you have a copy of it?

10 MR. SARVEY: Yeah, I do.

11 HEARING OFFICER WILLIAMS: Okay.

12 MR. SARVEY: I got one in the mail  
13 Friday.

14 HEARING OFFICER WILLIAMS: Okay.  
15 Certainly, do you have some comments on it, Mr.  
16 Sarvey?

17 MR. SARVEY: Yeah, I do have some  
18 comments on it, but I'll save it till the  
19 appropriate time.

20 HEARING OFFICER WILLIAMS: Okay. So  
21 we'll enter this document as applicant's 4C-4.  
22 And it will be subject to comments by Mr. Sarvey  
23 at some point.

24 Okay, now as Mr. Sarvey indicated, we  
25 had left Dr. Smallwood's testimony marked as 7A

1 for identification because apparently the document  
2 that applicant received was different from --  
3 well, the document that Dr. Smallwood was  
4 testifying from was different from the document  
5 that applicant had received as part of the  
6 prehearing conference testimony.

7 MR. WHEATLAND: We've had a chance to  
8 review both document, and although the second  
9 document is different in some respects from the  
10 first, we have not objection to admitting the  
11 revised document into evidence.

12 HEARING OFFICER WILLIAMS: Okay, so  
13 we'll admit 7A, and we'll drop the for  
14 identification part. And that will be admitted.

15 That does it insofar as the exhibits are  
16 concerned.

17 MS. DeCARLO: Staff has one additional  
18 exhibit we'd like to enter.

19 HEARING OFFICER WILLIAMS: Okay.

20 MS. DeCARLO: It's the testimony of  
21 Adolph Martinelli; it's included in our addendum  
22 to the prehearing conference statement.

23 HEARING OFFICER WILLIAMS: Yes. Did we  
24 mark that?

25 MS. DeCARLO: I don't believe it's been

1 marked. Oh, we have the letter from Adolph  
2 Martinelli as exhibit 1D.

3 HEARING OFFICER WILLIAMS: Okay.

4 MS. DeCARLO: There's also some visual  
5 resources-related discussion included within that.  
6 I don't know if you want them marked separately,  
7 or marked at a later date.

8 HEARING OFFICER WILLIAMS: Could I see  
9 what you're referring to?

10 (Pause.)

11 HEARING OFFICER WILLIAMS: Okay, so  
12 we'll mark the testimony of Mr. Adolph Martinelli  
13 on land use as staff's 1J.

14 MS. DeCARLO: Oh, I'm sorry, that is  
15 marked as exhibit 1D on land use.

16 PRESIDING MEMBER KEESE: It's 1D  
17 already.

18 HEARING OFFICER WILLIAMS: Okay. So  
19 then 1J will be his letter to the CEC on the  
20 visual?

21 MS. DeCARLO: It's actually not in the  
22 form of a letter. It's just a tabular format.

23 HEARING OFFICER WILLIAMS: Okay. So,  
24 the April 26, 2002 letter to Mr. Haussler is  
25 already marked as 1D. And what about the

1 testimony, then? Have we marked that?

2 MS. DeCARLO: No, not the tabular -- the  
3 table format for the LORS --

4 HEARING OFFICER WILLIAMS: Right.

5 MS. DeCARLO: -- visual resources. We  
6 haven't marked that yet.

7 HEARING OFFICER WILLIAMS: Okay. Well,  
8 it's my understanding that the comments on the  
9 visual resources table is not part of 1D? Is that  
10 a separate document?

11 MS. DeCARLO: Correct.

12 HEARING OFFICER WILLIAMS: So where is  
13 the cover letter that's part of the visual  
14 resources table?

15 MS. DeCARLO: There was no cover letter.  
16 Staff submitted just a cover testimony in our  
17 addendum in front of the letter. We received that  
18 by email from Mr. Martinelli while we were  
19 processing our final staff assessment.

20 HEARING OFFICER WILLIAMS: Okay, so  
21 we'll have this 1J, then.

22 MS. DeCARLO: Okay.

23 HEARING OFFICER WILLIAMS: The other  
24 housekeeping matters that we wanted to address is  
25 the briefing schedule.

1 I understand that -- well, the  
2 Committee's preference is that we break the  
3 briefing schedule down into a staggered format  
4 based upon the phases of the proceedings.

5 Of course, phase one being October 15th,  
6 which is primarily uncontested matters, but we did  
7 do worker safety and fire protection. And I  
8 understand those transcripts are probably going to  
9 be posted on the web today.

10 It's the Committee's intent that the  
11 parties have seven days from the time those  
12 transcripts are posted on the web to receive  
13 briefing on the various phases.

14 Of course, phase two topics of October  
15 16th would follow, once those transcripts are  
16 posted on the web.

17 And then today's proceedings, of course  
18 any continuation of today's proceedings, if  
19 there's a need, then would be the phase three  
20 portion. Well, depending on the breakdown. But,  
21 do you follow me in terms of the staggered  
22 briefing schedules.

23 MR. WHEATLAND: Seven calendar days?

24 HEARING OFFICER WILLIAMS: Seven  
25 calendar days, correct, from the posting of the



1 transcripts from the various phases on the web.

2 MR. WHEATLAND: Um-hum.

3 HEARING OFFICER WILLIAMS: Is that  
4 agreeable by the parties?

5 MR. SARVEY: We'll have seven days from  
6 the posting to submit on that phase, am I correct?

7 HEARING OFFICER WILLIAMS: On that  
8 phase, correct.

9 MR. SARVEY: Yeah, no problem.

10 HEARING OFFICER WILLIAMS: Okay, so if  
11 you have any questions, if we need to continue  
12 today's hearings there might be an issue as to  
13 what phase we're talking about. So we'll cross  
14 that bridge when we get to it.

15 MR. SARVEY: I have one question. I was  
16 told that the land use testimony from Tuesday  
17 would be provided to my witness. I just wanted to  
18 note for the record that we haven't received it.

19 HEARING OFFICER WILLIAMS: Correct.  
20 Well, that should be made available -- that should  
21 be provided on the web today. We'll see if you  
22 can get a copy of it at some point today and  
23 perhaps have it available. Or maybe during a  
24 break I can call and see if we can get it faxed so  
25 you'll have --

1 MR. SARVEY: Thank you.

2 HEARING OFFICER WILLIAMS: -- it  
3 available to you.

4 COMMISSIONER PERNELL: Mr. Williams, do  
5 we know that it's completed? Has it been  
6 transcribed yet?

7 HEARING OFFICER WILLIAMS: Yes, it has.  
8 The October 15th testimony has been received in my  
9 office. So it's just a matter of calling and  
10 seeing if we can get the land use testimony that  
11 was offered on the 15th.

12 MS. DeCARLO: And just for the record,  
13 staff's oral testimony didn't differ substantially  
14 from our written testimony. So there should have  
15 been no surprises.

16 HEARING OFFICER WILLIAMS: Okay. Great.  
17 Great. That's very helpful.

18 Okay, so --

19 MR. WHEATLAND: May I ask one more  
20 question on the --

21 HEARING OFFICER WILLIAMS: Sure.

22 MR. WHEATLAND: -- briefing, then?

23 Would there be an opportunity for reply briefs?

24 HEARING OFFICER WILLIAMS: Yes, I think  
25 the notice of evidentiary hearing provides three

1 days, --

2 MR. WHEATLAND: Okay.

3 HEARING OFFICER WILLIAMS: -- three days  
4 from receipt of the opening briefs, for reply  
5 briefs.

6 MS. DeCARLO: I have a little concern  
7 with that. It tends to take a bit longer for us  
8 to process our briefs inhouse. We have the three-  
9 day written, which I could probably do. But then  
10 we have to run that by management for review, and  
11 that takes at least a two-day schedule.

12 So I would just request that we allow,  
13 or that we have seven days to submit our reply  
14 briefs from receipt of opening briefs.

15 HEARING OFFICER WILLIAMS: Mr.  
16 Wheatland?

17 MR. WHEATLAND: I was just wondering if  
18 maybe there should just be one reply brief at the  
19 end, rather than having multiple reply briefs. I  
20 don't have strong feelings, but I'm wondering if  
21 that might be easier.

22 HEARING OFFICER WILLIAMS: That actually  
23 sounds like a good idea. Let's do that, then.  
24 We'll have one set of reply briefs after the  
25 submission of all the opening briefs, and then

1 we'll allow seven days for that.

2 MS. DeCARLO: From receipt of the last  
3 opening brief?

4 HEARING OFFICER WILLIAMS: The last  
5 opening brief, right.

6 MS. DeCARLO: Okay, great, thank you.

7 HEARING OFFICER WILLIAMS: Okay.

8 MR. WHEATLAND: And also may I ask, will  
9 there be some effort to expedite the preparation  
10 of the transcript for the 21st? Will there be a  
11 request to --

12 HEARING OFFICER WILLIAMS: Absolutely,  
13 absolutely.

14 MR. WHEATLAND: Thank you.

15 HEARING OFFICER WILLIAMS: We'll do  
16 that.

17 Then the matters that are listed on our  
18 topic agenda, the first is the matter of the  
19 Modesto Irrigation District request to provide an  
20 agency statement on transmission issues. Is there  
21 any objection to this request --

22 MR. WHEATLAND: We have no objection to  
23 their request to make public comment.

24 HEARING OFFICER WILLIAMS: Okay.

25 MS. DeCARLO: Staff has no objection.

1 HEARING OFFICER WILLIAMS: Okay. Is  
2 your --

3 MR. HILL: He is not here yet.

4 HEARING OFFICER WILLIAMS: Okay. We'll  
5 just take it when he comes.

6 Now, Mr. Sarvey, you have your request  
7 for some testimony on socioeconomics.

8 MR. SARVEY: Yes.

9 HEARING OFFICER WILLIAMS: Please  
10 refresh my recollection on what that is about.

11 MR. SARVEY: Well, in my preconference  
12 brief I had asked to examine the witnesses, but I  
13 was unsure under what topic we were going to cover  
14 this. And it related to socioeconomics, public  
15 benefit and override of -- the staff's recommended  
16 override.

17 HEARING OFFICER WILLIAMS: Yeah, I  
18 thought we'd take that under visual.

19 MR. SARVEY: Okay.

20 HEARING OFFICER WILLIAMS: Okay, so  
21 we'll deal with that under visual. And the last  
22 matter --

23 MS. DeCARLO: Actually staff's witness  
24 will be Paul Richins, and his testimony isn't  
25 actually contained physically in the visual

1 resources section. It's contained in the  
2 executive summary, a portion of it.

3 HEARING OFFICER WILLIAMS: Okay.

4 MS. DeCARLO: And he can be available  
5 later tonight.

6 HEARING OFFICER WILLIAMS: Okay, great.  
7 Thank you. And the last matter that we have is  
8 the clarification of the general condition of  
9 certification COM-9. And I take it this is the  
10 result of an agreement between applicant and  
11 staff? Or is --

12 MR. WHEATLAND: This is, I think,  
13 staff's proposed clarification to this condition,  
14 which we received this morning. And there is one  
15 further modification that we would propose to this  
16 language. And we believe that this modification  
17 is consistent with the discussion that we had with  
18 the staff.

19 Under 10 where it says site access for  
20 vendors must be strictly controlled. We would  
21 want to put instead site access for acutely  
22 hazardous materials vendors must be strictly  
23 controlled.

24 And then there following each point  
25 where there is a reference to the vendors, we

1 would want to specify that's it's acutely  
2 hazardous material vendors.

3 Later on in that same paragraph, again,  
4 acutely hazardous material vendors. And finally  
5 the last sentence would be: All vendor driver  
6 background checks would be consistent with the  
7 state and federal law requiring security and  
8 privacy.

9 So, these changes, we believe, would be  
10 consistent with our previous discussion with  
11 staff. And we would ask that they be included in  
12 this condition 10.

13 HEARING OFFICER WILLIAMS: Staff, could  
14 you provide the Committee a new draft, once  
15 those --

16 MS. DeCARLO: Sure. And unfortunately,  
17 our hazardous materials management witness isn't  
18 present today, so I will have to run these changes  
19 by him --

20 HEARING OFFICER WILLIAMS: Okay.

21 MS. DeCARLO: -- and if we are agreeable  
22 to them, we will include you with a revised  
23 version.

24 HEARING OFFICER WILLIAMS: Okay, fine.

25 MR. SARVEY: On COM-11 is there an

1 opportunity for intervenors to participate in that  
2 assessment, vulnerability assessment?

3 HEARING OFFICER WILLIAMS: Okay, why  
4 don't you, at a break, why don't you confer with  
5 the applicant and staff and see if you can work  
6 something out on that.

7 MR. SARVEY: Thank you.

8 HEARING OFFICER WILLIAMS: And then  
9 inform me later.

10 MR. SARVEY: Okay. We'll leave that  
11 pending.

12 Mr. Sarvey has provided a copy of the  
13 resolution, Sierra Club Resolution, that I  
14 previously had indicated was pending for  
15 identification. Mr. Sarvey's exhibit 6C.

16 Have the parties had a chance to look at  
17 this?

18 MR. WHEATLAND: I've had a chance just  
19 to look it over once this morning. Could I ask,  
20 is Mr. Schneider a member of the San Francisco Bay  
21 Chapter Executive Committee?

22 MR. SCHNEIDER: No, I'm not.

23 MR. WHEATLAND: We would certainly be  
24 willing to accept this resolution in the record as  
25 public comment. But we believe for it to be



1 introduced as an exhibit, or to have evidentiary  
2 value it would need to be sponsored by a member of  
3 the Executive Committee that could testify to the  
4 matters that are set forth in the whereas clauses.

5 HEARING OFFICER WILLIAMS: Is that  
6 acceptable to you, Mr. Sarvey?

7 MR. SARVEY: I believe Mr. Parfrey  
8 presented it.

9 MR. WHEATLAND: Yeah, so he testified  
10 previously that he was not a member of the San  
11 Francisco Bay Chapter.

12 MR. SCHNEIDER: I am the Conservation  
13 Chair of the Bay Chapter of the Sierra Club. And  
14 I did present this resolution to the Executive  
15 Committee, and was present at the time that they  
16 discussed it; answered questions about it. So I  
17 certainly can testify that it was adopted as  
18 indicated.

19 MR. WHEATLAND: We would have no problem  
20 to stipulating to the fact that it was adopted.  
21 But we would not want to include the resolution as  
22 to the truth of the matters asserted in the  
23 whereas clauses --

24 HEARING OFFICER WILLIAMS: Yes.

25 MR. WHEATLAND: -- without an

1 appropriate witness. But we would certainly  
2 stipulate to the fact that it has been adopted.

3 HEARING OFFICER WILLIAMS: Is that  
4 acceptable to you?

5 MR. SARVEY: No. Mr. Schneider drafted  
6 the resolution, itself, and he's the author and  
7 he's sitting right here so he can testify to  
8 whatever is contained in it. And I think it  
9 should be entered as evidence.

10 HEARING OFFICER WILLIAMS: Well, it will  
11 be entered as evidence. The applicant's sole  
12 objection is that it's not going to be admitted  
13 for the truth of the whereas clauses, it will just  
14 be admitted --

15 MR. SARVEY: I thought he said he wanted  
16 to enter it as public comment was my understanding  
17 of what he said.

18 HEARING OFFICER WILLIAMS: Mr.  
19 Wheatland?

20 MR. WHEATLAND: I just said that we  
21 would stipulate to the fact that the resolution  
22 has been adopted. We would object to entering it  
23 into the record as to the truth of the matters  
24 stated in the whereas clauses.

25 HEARING OFFICER WILLIAMS: So it would

1       come in as your 6C for the fact that it is,  
2       indeed, a Sierra Club resolution.

3               MR. SARVEY: All right, Mr. Schneider  
4       will be speaking on behalf of the Sierra Club  
5       during his testimony. He'll address each one of  
6       these whereas clauses, so --

7               HEARING OFFICER WILLIAMS: Okay. And we  
8       were talking about conditions. And we also left  
9       open the staff was going to get back to management  
10      on the applicant's proposed changes to the water  
11      resource condition. Staff, have you had a chance  
12      to do that yet?

13              MS. DeCARLO: It did go through  
14      management and there is some final copy. I,  
15      however, have not had a chance to review it, so I  
16      would like the opportunity to do so before we  
17      present it to the Committee and the applicant.

18              HEARING OFFICER WILLIAMS: Okay, so  
19      we'll leave that outstanding, as well.

20              MS. DeCARLO: And one last item. We  
21      also have the paleo condition that you had  
22      requested we provide in writing. And we have made  
23      one additional change that has been accepted by  
24      the applicant --

25              HEARING OFFICER WILLIAMS: Oh, good.

1 MS. DeCARLO: -- and that is contained  
2 in the document that Cheri Davis is handing out  
3 now.

4 HEARING OFFICER WILLIAMS: Okay, so then  
5 I think we'll enter this as Joint exhibit 1.  
6 Applicant, is that satisfactory?

7 MR. WHEATLAND: Yes, that is. Thank  
8 you.

9 HEARING OFFICER WILLIAMS: Okay.

10 HEARING OFFICER WILLIAMS: Okay, so  
11 geology and paleontology condition PAL-1 we'll  
12 admit as joint exhibit 1.

13 Okay, then preliminary matters aside, as  
14 I recall on the matter of land use, staff had  
15 presented their testimony on land use issues out  
16 of order to accommodate witnesses. And today we  
17 would then, I presume, begin with applicant?

18 MR. WHEATLAND: Well, I'd like to ask  
19 the Committee's permission to continue out of  
20 order --

21 HEARING OFFICER WILLIAMS: Okay.

22 MR. WHEATLAND: -- due to a confusion on  
23 our part. One of our land use witnesses, who was  
24 expecting to testify later in the day, is still on  
25 the way. Could we please take Mr. Martinelli's

1 testimony first, as a --

2 HEARING OFFICER WILLIAMS: Actually, I  
3 think that's a good idea. Staff, are you ready?

4 MS. DeCARLO: Yes, we are.

5 HEARING OFFICER WILLIAMS: Okay, then  
6 we'll do that. Let's swear the witness.  
7 Whereupon,

8 ADOLPH MARTINELLI  
9 was called as a witness herein, and after first  
10 having been duly sworn, was examined and testified  
11 as follows:

12 MS. DeCARLO: Staff is sponsoring the  
13 testimony of Adolph Martinelli, Agency Director,  
14 Alameda County Community Development Agency.

15 DIRECT EXAMINATION

16 BY MS. DeCARLO:

17 Q Mr. Martinelli, can you please state  
18 your name for the record?

19 A Adolph Martinelli.

20 Q And what is your job title?

21 A I'm the Agency Director of Alameda  
22 County Community Development Agency.

23 Q Can you please summarize your duties?

24 A I'm responsible for a diversified agency  
25 that includes planning, zoning and code

1 enforcement; the housing department of the County;  
2 childhood lead poison prevention department of the  
3 County; agriculture and weights and measures  
4 departments; surplus property authority where I  
5 serve as the Manager; and the redevelopment agency  
6 where I serve as the Executive Director.

7 Q And did you prepare the testimony  
8 entitled, testimony and qualifications of Adolph  
9 Martinelli, Agency Director, Alameda County  
10 Community Development Agency, included in staff's  
11 addendum to Energy Commission Staff's prehearing  
12 conference statement marked as exhibit 1D?

13 A Yes, I either prepared the testimony or  
14 I supervised its preparation, authorized its  
15 release.

16 Q Now, a lot of mention has been made  
17 throughout this process of measure D. Can you  
18 please briefly explain what measure D is and how  
19 it has been incorporated into Alameda County LORS?

20 A Measure D is substantial voter-approved  
21 initiative, which was approved by the voters in  
22 Alameda County in November of 2000. The  
23 initiative modified the east County general plan,  
24 as well as some provisions of plans that apply to  
25 the Ethan area and the Castro Valley area.

1           The plan substantially added, deleted,  
2       revised ECAP policies, programs and it modified  
3       and firmed up the urban growth boundary. Made  
4       changes in the land use diagram, in tables, 60  
5       policies and many definitions.

6           Some key points in the document is that  
7       the 20/10 planning period has been deleted, so  
8       there's no longer a 20/10 horizon for the planning  
9       period in the plan.

10          It substantially removed both designated  
11       urban development areas, as well as a category of  
12       urban reserve. That was one of the primary  
13       objectives of the initiative. It was targeted  
14       toward the north Livermore plan amendment that was  
15       approved by the County in its prior plan. It was  
16       jointly being implemented by the City of Livermore  
17       and the County.

18          It also created substantial changes in  
19       other uses, particularly with respect to expansion  
20       of quarries and landfills, which were explicitly  
21       limited by action in the initiative.

22          Q     And did you have a chance to review the  
23       proposed East Altamont Energy Center?

24          A     Yes, I did. Oh, I might add that  
25       Alameda County has incorporated the measure D

1 provisions, which were quite extensive, with the  
2 rest of the east County area plan. And that was  
3 taken to the board of supervisors by me on May 5th  
4 of this year.

5 The rectified general plan was adopted  
6 unanimously by the board, reflecting the will of  
7 the voters, as well as a consistency throughout  
8 the general plan document.

9 Q And can you please summarize your  
10 conclusions regarding the East Altamont Energy  
11 Center's conformance with Alameda County land use  
12 laws, ordinances, regulations and standards?

13 A Yes. I feel confident that the proposed  
14 east County Energy Center is consistent with the  
15 Alameda County policies that are in the east  
16 County area plan, as modified by measure D,  
17 provided that appropriate conditions are placed on  
18 it by the Energy Commission.

19 The ECAP, the East County Area Plan,  
20 does not preclude consideration of a power plant  
21 outside the urban growth boundary. It would be  
22 within the discretion of the board of supervisors  
23 if there were not a state preemption.

24 The plant falls within a very clear  
25 definition of infrastructure that is allowable in



1 the agricultural district. The provision that was  
2 in measure D was policy 14A. That is now new  
3 policy 12 in the rectified East County Area Plan.

4 And the electricity that would be  
5 produced by this facility, which could be  
6 considered approved in the area, would certainly  
7 be considered a public utility.

8 I feel that when we compare the policies  
9 of the -- comparing the project against the  
10 policies in the general plan, we need to look at  
11 the plan as an internally consistent general plan  
12 document that has been accomplished by the  
13 modification of the entire east County area  
14 general plan on May 5th.

15 Mr. Schneider submitted testimony at  
16 that hearing indicating that the consolidated and  
17 revised plan was consistent with the intent of the  
18 voters, and consistent with the letter of the  
19 initiative.

20 Q Is the Alameda County Board of  
21 Supervisors aware of your conclusions regarding  
22 this project?

23 A The board of supervisors received a copy  
24 of my letter to Bob Haussler which gave detailed  
25 responses to the many questions which were

1 submitted by the Energy Commission Staff. And had  
2 the conclusions that I've just summarized.

3 In addition, the board of supervisors  
4 acted on December 6th of 2001 and September 17th  
5 of 2002 to approve the farmlands mitigation  
6 agreement which both in the transmittal letter,  
7 the public presentation by myself, and in the  
8 document, as it was adopted, describe the  
9 magnitude of the power plant that's proposed, it's  
10 location, the CEC process and pending action that  
11 was expected toward the end of this year by the  
12 CEC.

13 Q And are you aware of any disagreement  
14 with your conclusions from the Alameda County  
15 Board of Supervisors?

16 A No.

17 Q Do you anticipate any problems in  
18 identifying the agricultural lands to preserve as  
19 part of the County's mitigation agreement with  
20 Calpine?

21 A No. I have been very active in a  
22 similar preservation program that's focused in the  
23 south Livermore area. I have, as manager of the  
24 surplus property authority, on behalf of the  
25 County, bought agricultural easements and I have

1 sold agricultural easements.

2 They have been very effective in  
3 securing the urban growth boundary and providing  
4 some equity to land users.

5 The East County Area Plan covers around  
6 450 square miles of which less than 25 percent are  
7 urban areas. So that we have a territory, you  
8 know, in excess of 300 square miles to seek  
9 agricultural easements.

10 The mitigation agreement that we  
11 received, the farmlands agreement, provides \$1  
12 million for acquisition of comparable lands. The  
13 nearer in to urban areas we've been acquiring  
14 easements from \$11,000 to \$15,000 an acre.  
15 Farther out it would be less.

16 I suspect in the San Joaquin Valley site  
17 we could probably buy fee title for that amount of  
18 money. Just speculation.

19 Q And do you have anything further to add  
20 to your testimony?

21 A No.

22 Q Okay.

23 MS. DeCARLO: The witness is available  
24 for cross-examination.

25 HEARING OFFICER WILLIAMS: Thank you.

1 Applicant.

2 MR. WHEATLAND: We have no questions,  
3 thank you.

4 HEARING OFFICER WILLIAMS: Thank you.  
5 Mr. Sarvey.

6 MR. SARVEY: Yeah, I have a few  
7 questions.

8 CROSS-EXAMINATION

9 BY MR. SARVEY:

10 Q Mr. Martinelli, has the East County Land  
11 Trust been formed yet?

12 A No. There is a committee that has been  
13 established by the board of supervisors, and that  
14 is one of its work products.

15 There is a South Livermore Valley Land  
16 Trust, but not a Countywide one.

17 HEARING OFFICER WILLIAMS: And not what?  
18 Excuse me.

19 MR. MARTINELLI: And not a Countywide  
20 Trust. There's a geographic -- we -- limited  
21 trust formed to preserve vineyard lands just on  
22 the south side of Livermore.

23 BY MR. SARVEY:

24 Q How much of the farmland mitigation fee  
25 will go to administrative costs?

1           A     It's limited to 10 percent to establish  
2     the trust. Not for administrative costs. Ninety  
3     percent or more would be dedicated and limited for  
4     the acquisition of easements or fee.

5           Q     Has the specific parcel been identified  
6     at this point?

7           A     No. Although the -- no. The CEC Staff  
8     have suggested guidelines for identification of  
9     the properties, and that's why the agreement was  
10    modified. But it has not set a parcel for  
11    acquisition.

12          Q     If the trust has not been established,  
13    and the parcel has not been identified, what  
14    guarantees does the Committee have that  
15    appropriate amounts and quality of land will be  
16    provided in accordance with CEQA?

17          A     The mitigation agreement and the funds  
18    that would accrue to the County by the agreement  
19    are specific to be used for the purposes that are  
20    ascribed in the agreement.

21                If -- the agreement provides that if the  
22    trust isn't formed, the Alameda County can take  
23    the position to acquire easements in lieu of the  
24    trust.

25                We anticipate that the trust will be

1       formed well before the power plant would be built.

2           Q     So there's a possibility that the trust  
3       may not be formed, is that correct?

4           A     There's a possibility that the trust may  
5       not be formed in the time that would be necessary  
6       if the power plant were built next year. But the,  
7       you know, the east County plan calls for the  
8       formation of such a trust, and the trust is in the  
9       process of being formed.

10          Q     In the event that the trust is not  
11       created, will a trust be created to actually hold  
12       the easements, themselves?

13          A     The easements will be held by the County  
14       of Alameda if a trust is not formed; they would  
15       then be expanded to the trust at the time of  
16       formation.

17                When we created the South Livermore  
18       Trust the trust documents were drafted in my  
19       office. We secured the first easements that were  
20       created in Alameda County; held then by the board  
21       of supervisors until such time as the South  
22       Livermore Trust was formed and active. We  
23       transferred the deed of title of the easements to  
24       the trust.

25          Q     Will the parcel for the mitigation be

1 located in eastern Alameda County?

2 A Yes.

3 Q Doesn't measure D already provide for  
4 the protection of farmland and open space except  
5 when Alameda County decides to put a power plant  
6 in?

7 A Measure D provides for protection of  
8 farmlands and open space. But the purposes of the  
9 mitigation that's called for in the east County  
10 plan as modified by measure D when uses occur on a  
11 property, all properties. And the purposes of the  
12 easement can be to secure the urban limit line, to  
13 provide equity to other landowners, to have  
14 possibly recreational use associated with it, or  
15 to protect habitat, as well as agricultural  
16 purposes.

17 Q So if the parcel is going to be located  
18 in eastern Alameda County and measure D already  
19 provides for the protection of farmland and open  
20 space, how does the farmland mitigation agreement  
21 add anything extra to measure D as it's described?

22 A Well, the acquisition of an easement  
23 from a farmer may subsidize the farming operation  
24 such that it continues to be viable. Measure D  
25 calls for cultivated agriculture. This would

1 assist farmers in maintaining the cultivation on  
2 the property.

3 In the south Livermore area we found  
4 that the acquisition of the easements have been a  
5 very strong incentive to not only maintenance of  
6 vineyards in the area, but planting of additional  
7 vineyards, because it's an economic resource that  
8 was not available to the landowner.

9 Q Well, if measure D already provides for  
10 the protection of farmland and open space,  
11 wouldn't you have to create more land to actually  
12 add to the strengths of measure D as far as  
13 protecting open space and farmland?

14 A There's a difference between the  
15 maintenance of land or the cultivation of land.  
16 It's an expensive investment to put in the  
17 necessary improvements to create farmland and to  
18 have an economic return.

19 To the extent that measure D calls for  
20 cultivated agriculture, acquisition of an easement  
21 may be very successful in implementing that  
22 provision.

23 Q Isn't the parcel that the East Altamont  
24 Energy Center being located on already protected  
25 as prime farmland in eastern Alameda County?



1           A     Yes.

2           Q     Is the East Altamont Energy Center being  
3     financed with any public funds?

4           A     I have no idea.  I don't believe so.

5           Q     Will Alameda County receive any benefits  
6     in terms of revenue from the East Altamont Energy  
7     Center?

8           A     Of course.  In addition to adding to the  
9     supply of energy to the broad community, there's  
10    tax revenue that would accrue from the project;  
11    and it would increase assessed values in the area.  
12    There's a farmlands mitigation agreement being  
13    indicated.  It doesn't directly accrue to Alameda  
14    County, but Alameda County would be the receiver  
15    of the funds to implement the program.

16                I believe you've received testimony from  
17    the County Fire Chief about a provision of a fire  
18    station and enhanced emergency response.

19           Q     Did that have any influence on the  
20    interpretation of the County LORS including  
21    measure D?

22           A     None, no.

23           Q     Did the County Board of Supervisors  
24    oppose measure D?

25                MS. DeCARLO:  Objection, relevance.

1 HEARING OFFICER WILLIAMS: We'll allow  
2 it.

3 MR. MARTINELLI: The County Board of  
4 Supervisors, in a split vote, put on a competing  
5 measure at the election. The board of  
6 supervisors, I think we have two or three new  
7 supervisors since that took place, the board of  
8 supervisors certainly support measure D.

9 Currently we are actively defending  
10 measure D in court. We're in the Court of Appeal.  
11 We've modified our general plan to incorporate  
12 measure D as a policy of the County.

13 BY MR. SARVEY:

14 Q Measure D only calls for cultivated ag  
15 in north Livermore for which incentives exist in  
16 the form of 20-acre parcels, which are smaller  
17 than the underlying minimum parcel size. Why  
18 would these mitigation funds be needed for  
19 additional cultivated agriculture under measure D?

20 A Well, as it reflects the provisions in  
21 north Livermore, I'm not sure if I see the  
22 significance with the East Altamont Power Plant  
23 proposal.

24 But in north Livermore, those incentives  
25 are a little bit obscure. Measure D allows the

1 County to increase the density in the area,  
2 provided there's adequate irrigation water, that  
3 does not allow houses to be built on the parcels  
4 to be created, and it has some other tests which  
5 are pretty burdensome to implement the 20-acre  
6 parcels.

7 But in any event, if land trust funds  
8 were available to be applied towards the  
9 commercial operation of a farm, it would subsidize  
10 the extension of water, for example; it would make  
11 it more viable.

12 Q Did measure D specifically delete that  
13 provision of ECAP which previously allowed other  
14 industrial uses appropriate for remote areas and  
15 determined to be compatible with agriculture?

16 A Yes.

17 Q And why do you think that provision was  
18 deleted?

19 A I don't know.

20 Q Is it possible that it was deleted to  
21 prevent facilities such as East Altamont Energy  
22 Center from being sited in that area?

23 A No. My sense is that the provision that  
24 was added to the plan dealing with infrastructure  
25 clearly, in plain language, permits consideration

1 of such a facility. So I doubt if that was the  
2 intent.

3 Beyond that, the drafters of measure D  
4 wrestled with permitted uses in the agricultural  
5 districts; elected not to define them. They also  
6 very clearly targeted two types of uses where the  
7 board needed -- where they intended the board of  
8 supervisors' discretion to be limited. The  
9 expansion of quarry areas, and the expansion of  
10 landfill areas.

11 No such restraints were drafted with  
12 respect to utility infrastructure in measure D.

13 Q What kind of uses would not be permitted  
14 from this provision that would have been allowed  
15 under the old D cap?

16 A Could you repeat the question? I didn't  
17 quite follow --

18 Q What kind of uses would not be permitted  
19 from this provision that I just cited, other  
20 industrial uses appropriate for remote areas and  
21 determined to be compatible with agriculture, that  
22 would have been allowed -- that would not be  
23 permitted from this provision that would have been  
24 allowed under the old ECAP?

25 A In historic times there were some uses,

1       there were distribution uses that were linked, or  
2       tied to say quarry uses that were located on  
3       nearby properties where they manufactured concrete  
4       products. And then those were rationalized in  
5       that they were associated with the quarries,  
6       although on different properties. They were in  
7       outlying areas. They were land-intensive, and  
8       they had been approved. Those are precluded under  
9       this initiative.

10       Q     I believe the quarries were already  
11       dealt with in a specific policy. Could you give  
12       me another example?

13       A     I can't.

14       Q     Is the East Altamont Energy Center an  
15       agricultural use?

16       A     The East Altamont Energy Center is  
17       infrastructure that is permitted to be in an  
18       agricultural district.

19       Q     Does the East Altamont Energy Center  
20       protect sensitive viewsheds as required by ECAP  
21       policy 52?

22       A     If you read policy 52 you'll see that it  
23       is not a sensitive viewshed. Sensitive viewsheds  
24       are defined very clearly in the definitions. And  
25       they talk about ridgelines, certain peaks, such as

1 Brushy Peak and Mount Diablo.

2 I don't see the relevance of it in an  
3 area that is not a sensitive viewshed. You know,  
4 across the street from this proposal is the  
5 Western Tracy Substation. There are four, five or  
6 six major high tension lines criss-crossing the  
7 area. There are several thousand windmills on the  
8 side of the Altamont Hills. It's not a critical  
9 viewshed.

10 Q The people of San Joaquin County do  
11 perceive this as a very sensitive viewshed, as it  
12 blocks their view of Mount Diablo from across the  
13 highway. Soon Mountain House development will  
14 have homes there. And do you feel that the East  
15 Altamont Energy Center protects their sensitive  
16 viewshed?

17 A By the County's definition of sensitive  
18 viewshed, it is not a sensitive viewshed. I'm  
19 familiar with the Mountain House new town.  
20 Alameda County had a lot of discussions with San  
21 Joaquin County over it. It removes almost 5000  
22 acres from agriculture. It's generally flat land,  
23 so it's very difficult to understand how you look  
24 past one house to the next in a massive  
25 development.

1           There's also a buffer between the County  
2 line and the development, which is being  
3 landscaped. It's going to be very difficult to  
4 imagine a viewshed from that area to -- a  
5 sensitive viewshed from that area.

6           HEARING OFFICER WILLIAMS: Mr. Sarvey,  
7 before you continue can we take about five  
8 minutes?

9           MR. SARVEY: Sure.

10          HEARING OFFICER WILLIAMS: Let's take a  
11 five-minute break.

12          (Brief recess.)

13          HEARING OFFICER WILLIAMS: Okay, we're  
14 back on the record now, and we'll resume with Mr.  
15 Sarvey's cross-examination.

16          MR. SARVEY: Let's see, where were we.  
17 BY MR. SARVEY:

18          Q     We were talking about protecting  
19 sensitive viewsheds, and, Mr. Martinelli, you said  
20 that the East Altamont Energy Center does not  
21 impact any sensitive viewsheds like Mount Diablo  
22 and such, is that correct?

23          A     Yes.

24          Q     I'm going to show you a picture from the  
25 FSA, and I'm going to ask you this question again.

1 HEARING OFFICER WILLIAMS: Mr. Sarvey,  
2 before you do that, why don't you tell us what  
3 that picture is.

4 MR. SARVEY: This question is a  
5 September 2002 picture from KOP-1 from the FSA.

6 HEARING OFFICER WILLIAMS: And is it a  
7 figure -- is it identified as a figure, or --

8 MR. SARVEY: It is figure 2.

9 HEARING OFFICER WILLIAMS: Okay, thank  
10 you.

11 BY MR. SARVEY:

12 Q Now, does the East Altamont Energy  
13 Center obscure anyone's view of Mount Diablo?

14 A From this depiction it does. From the  
15 edge of the property line looking, yes, that's  
16 north -- northwest.

17 Q Thank you.

18 HEARING OFFICER WILLIAMS: Mr. Sarvey,  
19 could you pass that around to the Committee,  
20 please.

21 MR. SARVEY: Sure.

22 BY MR. SARVEY:

23 Q Now, in relation to sensitive viewsheds,  
24 this is a statement from the East County Area Plan  
25 revised by initiative November 2000. Definition,



1 sensitive viewshed. These are natural areas that  
2 provide orientation and a sense of place within a  
3 community or region. These areas typically  
4 include ridgelines, hilltops, large contiguous  
5 open spaces and woodlands."

6 Do you agree with that statement?

7 A Yes, that's the definition of a  
8 sensitive viewshed.

9 Q Thank you. Would the East Altamont  
10 Energy Center parcel that it sits on now qualify  
11 as a large contiguous open space area?

12 A In the context of sensitive viewsheds,  
13 no.

14 Q Does the East Altamont Energy Center  
15 provide for additional recreational facilities as  
16 required by ECAP policy 52?

17 A I have to look at ECAP policy 52. I  
18 can't imagine that it would be a requirement in  
19 this case.

20 (Pause.)

21 MR. MARTINELLI: I don't see even the  
22 context of it.

23 MR. SARVEY: We'll move on.

24 BY MR. SARVEY:

25 Q Does the East Altamont Energy Center

1       reduce air pollution in the County?

2           A     Does it reduce air pollution in the  
3       County?

4           Q     Yes.

5           A     I doubt it. I have no idea.

6           Q     Thank you. How many acres of farmland  
7       could be irrigated by 7000 acrefeet of water  
8       recycled or raw?

9                   MR. WHEATLAND: I'm going to object to  
10      this line of questioning. It seems to go way  
11      beyond the scope of Mr. Martinelli's testimony.

12                   HEARING OFFICER WILLIAMS: Sustained.

13      BY MR. SARVEY:

14           Q     Shouldn't the County be compensated for  
15      any farmland that will be potentially taken out of  
16      production in a drought year to protect valuable  
17      farmland?

18           A     I didn't quite understand that.

19           Q     Shouldn't the County be compensated for  
20      any farmland that would potentially be taken out  
21      of production in a drought year to protect  
22      valuable farmland?

23           A     I don't see compensation to the County  
24      is relevant to the premise, but -- I think I don't  
25      understand the question.

1           Q     It was a preface question by the  
2     objected question, so it's going to be hard for me  
3     to explain it without the previous question.

4                 Wouldn't the East Altamont Energy Center  
5     be more appropriate in an existing brownfield  
6     site?

7           A     Not necessarily. The Center, as I  
8     understand it, is located where it is proposed to  
9     be located because of the proximity of the Western  
10    Substation, the major transmission lines which  
11    serve the area from that hub, the availability of  
12    gas and water. Those characteristics are here and  
13    not somewhere else.

14          Q     Wouldn't an existing brownfield site be  
15    more appropriate under measure D than the current  
16    agricultural parcel that is being considered?

17          A     No. I mean I'd say that measure D is  
18    silent about that.

19          Q     The Mountain House area is specifically  
20    protected for intensive agriculture by County  
21    policy. How does mitigation money spent anywhere  
22    else conform to that policy?

23          A     The language in the general plan that  
24    was drafted before measure D, it was in direct  
25    response to the Mountain House in the community.

1 And it was the County's policy that the area in  
2 Alameda County should be preserved for  
3 agriculture.

4 That does not mean that every acre in  
5 this area, which is probably around 10 square  
6 miles, be placed in cultivated agriculture. But  
7 that the broad area be precluded from expansion of  
8 the Mountain House community.

9 HEARING OFFICER WILLIAMS: Mr.  
10 Martinelli, when you say 10 square miles, are you  
11 referring to the area of Alameda County where the  
12 plant is located?

13 MR. MARTINELLI: Yes. There's a policy  
14 in the general plan that deals with preservation  
15 of cultivated agriculture area in the Mountain  
16 House area. And it's the areas between the  
17 aqueduct and the County lines of both Contra Costa  
18 and San Joaquin County. And it's a quite sizeable  
19 area. Essentially it's the San Joaquin Valley  
20 side of Alameda County.

21 HEARING OFFICER WILLIAMS: Thank you.  
22 You may continue, Mr. Sarvey.

23 BY MR. SARVEY:

24 Q How much ag land in Mountain House could  
25 be developed and still be consistent with County

1 policy?

2 A Only the ag land that is developed in  
3 purposes that are consistent with the agricultural  
4 district, and within the framework of the plan, so  
5 it would include infrastructure that would be  
6 allowed, public facilities, quasi-public  
7 facilities, you know, there's limited menu of what  
8 could be placed in the area.

9 Q Would an oil refinery be considered  
10 infrastructure?

11 A No.

12 Q Doesn't an oil refinery provide high  
13 quality energy needs for transportation services?

14 A Yes, I imagine so.

15 Q How is that different from the East  
16 Altamont Energy Center?

17 A By normal understanding of what a  
18 utility is, you know. For years we're used to  
19 working with PG&E, but with deregulation we have  
20 other private entities who are providing utility  
21 services.

22 I've not considered gas a utility that's  
23 regulated in the same manner with the state  
24 preemptions of local -- gasoline, I mean, as a  
25 preemption by the state.

1           Q     Did the Energy Commission Staff disagree  
2     with any of your conclusions on the land use  
3     issues?

4           A     The staff disagreed -- the conclusions  
5     that were in the summary were that they deferred  
6     to the judgment of the local jurisdiction. They  
7     raised questions, but they concluded that the  
8     response by me and my staff were plausible, and  
9     those were the ones that were accepted by the  
10    staff.

11                    You should ask the staff --

12          Q     I already did. Let me read something to  
13    you from the conclusions.

14                   HEARING OFFICER WILLIAMS: Why don't you  
15    tell us what you're --

16                   MR. SARVEY: Page 5.5-19.

17                   HEARING OFFICER WILLIAMS: Of the?

18                   MR. SARVEY: Of the FSA. First  
19    paragraph.

20    BY MR. SARVEY:

21          Q     Although staff does not completely agree  
22    with the conclusions of the County, we find its  
23    interpretation is reasonable.

24                   So apparently there were some  
25    disagreements, is that correct?

1           A     I just looked at the conclusion in this,  
2     and it goes on to say that we do not completely  
3     agree with the conclusions of the County, we find  
4     that the interpretation is a reasonable one and  
5     defer to the County's interpretation of their own  
6     guidelines, standards, policies and conclusions,  
7     that the Energy Center is consistent and allowed  
8     use.

9           Q     And do you know which conclusion staff's  
10    referring to when they say they don't agree with  
11    your interpretation, but they're going to defer to  
12    your --

13           MR. WHEATLAND:  I'm going to object to  
14    the question.  The staff witness is here today.  I  
15    think that's a more appropriate question directed  
16    to the staff than to Mr. Martinelli.

17           HEARING OFFICER WILLIAMS:  Sustained.

18           MR. SARVEY:  Ask the staff now or later?

19           MS. DeCARLO:  Actually, the staff gave  
20    their testimony on --

21           MR. SARVEY:  Okay, that's absolutely  
22    correct.

23           MS. DeCARLO:  -- the previous hearing --

24           MR. SARVEY:  I'll let it go.

25           HEARING OFFICER WILLIAMS:  We're going

1 to try to --

2 MR. SARVEY: I'll move on.

3 HEARING OFFICER WILLIAMS: We're trying  
4 to get you a facsimile copy of that transcript,  
5 Mr. Sarvey, so you'll have it through the -- we  
6 can revisit the issue later if you'd like, after  
7 you've reviewed the transcript.

8 MR. SARVEY: Nothing further, thank you.

9 HEARING OFFICER WILLIAMS: Yeah, that  
10 fax is coming in right now, Mr. Sarvey, so you  
11 should have it available fairly soon.

12 Staff.

13 MS. DeCARLO: A couple redirects,  
14 please?

15 HEARING OFFICER WILLIAMS: Yes.

16 REDIRECT EXAMINATION

17 BY MS. DeCARLO:

18 Q Mr. Martinelli, can you foresee any  
19 reason at this time why an East County Land Trust  
20 would not be formed?

21 A No. The agricultural committee is  
22 formed, and that's one of its work products,  
23 moving forward aggressively to accomplish just  
24 that.

25 In the absence of the trust, in the



1 short term, the board of supervisors can function  
2 as a trust.

3 Q And do the provisions contained in  
4 measure D prevent agricultural land from being  
5 taken out of production due to market  
6 considerations?

7 A No.

8 Q Okay.

9 MS. DeCARLO: That's all for staff.

10 HEARING OFFICER WILLIAMS: Okay. Yes,  
11 Commissioner Pernell has some questions.

12 COMMISSIONER PERNELL: Mr. Martinelli,  
13 this is kind of a followup on the East County Land  
14 Trust. Was that in measure D, or is that part of  
15 a negotiation, or --

16 MR. MARTINELLI: The sense of  
17 establishing a land trust was in the East County  
18 Area Plan before measure D. It remains in measure  
19 D. There's a provision in the general plan, as  
20 modified by measure D, that talks about mitigation  
21 of uses that occur and providing funding for a  
22 land trust.

23 We feel it's a very important means of  
24 preserving and enhancing agriculture. The  
25 substantial funding that has been negotiated to be

1 received from the East Altamont Energy Center can  
2 be used in conjunction with other funding sources  
3 to leverage the sources. And we should be able to  
4 create quite a benefit as far as enhancing  
5 cultivated agriculture in the County.

6 COMMISSIONER PERNELL: All right, so if  
7 I understand you, the trust was already in the  
8 plan, but it also got incorporated in measure D?

9 MR. MARTINELLI: That's correct.

10 COMMISSIONER PERNELL: And how long does  
11 it take to set up such a trust?

12 MR. MARTINELLI: Normally it takes about  
13 six months to go through the incorporation  
14 process. And get up, to secure the tax exempt  
15 status, and to have the operating system in place.

16 COMMISSIONER PERNELL: Right. And, as a  
17 followup question on this issue, has that process  
18 begun?

19 MR. MARTINELLI: Yes.

20 COMMISSIONER PERNELL: Okay. My last  
21 question dealt with a picture that Mr. Sarvey  
22 passed around, figure 2. And it had to do with  
23 visual.

24 MR. MARTINELLI: Um-hum.

25 COMMISSIONER PERNELL: And there was

1       this white cloud that was blocking Mount Diablo. I  
2       wonder if you or Mr. Sarvey or someone can explain  
3       to me whether that's there 24 hours a day, or  
4       exactly what that is?

5               MS. DeCARLO:  Actually later today we'll  
6       be covering plumes.  And we have a witness here to  
7       testify as to our analysis of the frequency of  
8       plumes.  But our analysis, the gist of it is that  
9       that plume will not be seen 24 hours.

10              I believe that's a 10 percent simulation  
11       that could occur approximately 10 percent of the  
12       time.

13              COMMISSIONER PERNELL:  Right, and I  
14       bring that up because of the question of the  
15       visual and there is some blockage of Mount Diablo.  
16       And the point is that the plume won't be there.  
17       But we'll talk about that later.

18              Thank you, Mr. Williams.

19              HEARING OFFICER WILLIAMS:  Thank you,  
20       sir.  Mr. Sarvey, do you have anything further at  
21       this time on recross?  Based upon the questions  
22       that were asked by staff and Commissioner Pernell.

23              MR. SARVEY:  Yes.  I would like to --

24              HEARING OFFICER WILLIAMS:  Mr. Sarvey,  
25       if it's --

1 MR. SARVEY: -- identify --

2 HEARING OFFICER WILLIAMS: -- if it's  
3 something that --

4 MR. SARVEY: It's --

5 HEARING OFFICER WILLIAMS: -- that's  
6 already covered, I mean, --

7 MR. SARVEY: It's directly related to  
8 the question Mr. Pernell just asked him. I wanted  
9 to show him another figure without the plume, and  
10 ask him the same question, if that's okay.

11 HEARING OFFICER WILLIAMS: Okay. What  
12 are you holding?

13 MR. SARVEY: This is visual resource  
14 figure 6B. It's a picture of the East Altamont  
15 Energy Center without the plume.

16 HEARING OFFICER WILLIAMS: Okay.

17 MR. WHEATLAND: Can we wait one --

18 MR. SARVEY: And I just wanted to ask  
19 him if he felt that that particular picture  
20 obstructed the view of Mount Diablo and the  
21 surrounding hills.

22 MR. WHEATLAND: Can we just wait for one  
23 second until we can find the -- I'm not finding a  
24 6B, so I just --

25 (Pause.)

1 MR. WHEATLAND: Mr. Sarvey, could I just  
2 come over and look at the document you have?

3 MR. SARVEY: Sure.

4 MR. WHEATLAND: Okay, it's visual  
5 resources figure 6B, and that's KOP-5, a visual  
6 simulation of the proposed project at the start of  
7 project operation as viewed at the intersection of  
8 Byron Bethany Road and Lindeman Road. Thank you.

9 HEARING OFFICER WILLIAMS: Thank you for  
10 that clarification, Mr. Wheatland.

11 Now, Mr. Sarvey, would you repose the  
12 question to Mr. Martinelli?

13 RECROSS-EXAMINATION

14 BY MR. SARVEY:

15 Q Does that particular view of the  
16 facility impact anybody's sensitive viewshed of  
17 Mount Diablo and the surrounding range?

18 A First of all, this is not a sensitive  
19 viewshed by the nature of the area, itself,  
20 because of the other infrastructure that's in  
21 place.

22 Mount Diablo is, I don't know, 20 or 30  
23 miles away. Looking at the intersection with a  
24 view that places the power plant between it and  
25 Mount Diablo, it would, at that corner, for a

1       brief period of time you're driving down the road,  
2       be near the visibility of that far distant  
3       skyline.

4               But if you planted a crop of corn on the  
5       property you wouldn't see Mount Diablo, either. I  
6       don't see that it's very significant observation.

7               Q     So if you lived across the street from  
8       there you don't feel that that would impact your  
9       view of Mount Diablo and the surrounding range?

10              MR. WHEATLAND: I object to the  
11       question. It assumes that someone lives across  
12       the street.

13              HEARING OFFICER WILLIAMS: Sustained.

14              MR. SARVEY: I believe the Mountain  
15       House development will be across the street,  
16       but --

17              MR. MARTINELLI: Well, I think the  
18       Mountain House development will be a mile and a  
19       half or so further to the south -- east.

20       BY MR. SARVEY:

21              Q     So your answer would be for a fleeting  
22       moment on the highway you feel that it might have  
23       an impact?

24              A     If you didn't have an agricultural crop  
25       between it and the roadway.

1           Q     Is there an agricultural crop in this  
2 picture?

3           A     No, but our general plan calls for  
4 cultivated agriculture in the area.  It's  
5 certainly possible.

6           MR. SARVEY:  Okay, thank you.

7           HEARING OFFICER WILLIAMS:  Okay.  I  
8 think at this point we should probably take  
9 staff's testimony -- excuse me, applicant's  
10 testimony.  I believe your witness is present, Mr.  
11 Wheatland?

12          MR. WHEATLAND:  Yes, they are, thank  
13 you.  We have a three-member panel.  Could I have  
14 the panel sworn in, please.  
15 Whereupon,

16          VALERIE YOUNG, STEVE DeYOUNG, ALICIA TORRE  
17 were called as witnesses herein, and after first  
18 having been duly sworn, were examined and  
19 testified as follows:

20          MR. WHEATLAND:  Why don't we use the  
21 microphone just for the direct, and then pass it  
22 over, as well.

23                   DIRECT EXAMINATION

24          BY MR. WHEATLAND:

25           Q     Would you each please state your name

1 for the record?

2 MS. YOUNG: My name is Valerie Young,  
3 V-a-l-e-r-i-e Y-o-u-n-g.

4 MR. DeYOUNG: My name is Steve DeYoung,  
5 last name is D-e-Y-o-u-n-g.

6 MS. TORRE: My name is Alicia Torre,  
7 that's A-l-i-c-i-a Torre, T-o-r-r-e.

8 MR. WHEATLAND: The witnesses should  
9 have before them a copy of the applicant's  
10 testimony on land use, which has been identified  
11 as exhibit 4B.

12 I'd like to ask each of you, was this  
13 testimony, as set forth in exhibit 4B, prepared by  
14 you or at your direction?

15 MS. YOUNG: Yes.

16 MR. DeYOUNG: Yes.

17 MS. TORRE: Yes.

18 MR. WHEATLAND: And does exhibit 4B  
19 contain your qualifications? I believe for one of  
20 our witnesses the qualifications were submitted  
21 following the submission of exhibit 4B.

22 So, are your qualifications set forth in  
23 exhibit 4B or in a late-filed exhibit?

24 MS. YOUNG: Yes, they are.

25 MR. DeYOUNG: Yes.



1 MS. TORRE: Yes.

2 MR. WHEATLAND: Okay, and I'd like to  
3 ask each of the witnesses to please briefly  
4 summarize your qualifications.

5 MS. YOUNG: Again, my name is Valerie  
6 Young. I'm a Senior Environmental Planner and  
7 Vice President with CH2M HILL in San Jose. I've  
8 been a practicing planner for 23 years.

9 My most recent energy projects include  
10 cosponsoring the land use testimony for the  
11 Metcalf Energy Center and the Los Esteros Critical  
12 Energy Facility.

13 MR. DeYOUNG: Steve DeYoung. I have 22  
14 years experience in environmental management with  
15 The Bechtel Corporation, Lawrence Livermore  
16 National Laboratory, and the last two years as an  
17 independent consultant working for Calpine.

18 MS. TORRE: My name is Alicia Torre.  
19 I'm the Project Development Manager for the East  
20 Altamont Energy Center. I have almost 20 years  
21 experience in the siting and development of  
22 independent energy facilities, including  
23 compatibility with local land use provisions. And  
24 I have sited small cogeneration plants, major gas-  
25 fired independent energy centers, and wind

1 generation.

2 MR. WHEATLAND: Mr. DeYoung, speaking on  
3 behalf of the panel, do you have any additions,  
4 corrections or clarifications that you'd like to  
5 make to exhibit 4B?

6 MR. DeYOUNG: No.

7 MR. WHEATLAND: To each of the  
8 witnesses, is the testimony that you are  
9 sponsoring and the facts contained therein true to  
10 the best of your knowledge?

11 MS. YOUNG: Yes.

12 MS. TORRE: Yes.

13 MR. DeYOUNG: Yes.

14 MR. WHEATLAND: And do the opinions  
15 represent your best professional judgment?

16 MS. YOUNG: Yes.

17 MR. DeYOUNG: Yes.

18 MS. TORRE: Yes.

19 MR. WHEATLAND: And do you adopt exhibit  
20 4B as your testimony in this proceeding?

21 MS. YOUNG: Yes.

22 MR. DeYOUNG: Yes.

23 MS. TORRE: Yes.

24 MR. WHEATLAND: Okay. Mr. DeYoung, if  
25 you would please summarize the testimony?

1           MR. DeYOUNG: The predominant land uses  
2     in the project vicinity are large parcel  
3     agriculture, electric utilities, highways,  
4     recreation, a mainline railroad and water  
5     management projects.

6           Major public uses in the vicinity  
7     consist of the Tracy Substation located on Kelso  
8     Road west of Mountain House Road, comprising the  
9     substation and major transmission line corridors  
10    north of it.

11          Bethany Reservoir is a major park  
12    located approximately 2.5 miles to the southwest.  
13    Two major water projects, defined as water  
14    management features in the East County Area Plan,  
15    or ECAP, of the California Aqueduct and the Delta-  
16    Mendota Canal. Both located approximately two  
17    miles southwest of the project.

18          The area comprising the two water  
19    projects, the reservoir and the east slope of the  
20    coastal foothills is designated for open space,  
21    resource management, watershed protection in  
22    measure D. The project is outside the urban  
23    growth boundary designated in the ECAP.

24          With regard to construction and  
25    operation impacts, with the mitigation provided

1 under the amended and restated East Altamont  
2 Energy Center farmlands mitigation agreement,  
3 construction and operation of the East Altamont  
4 Energy Center and electric transmission line will  
5 comply with the Alameda County East County Area  
6 Plan as amended by measure D. And will not have a  
7 significant impact under CEQA guidelines, appendix  
8 G.

9 Likewise, construction and operation of  
10 the natural gas pipeline and water pipeline routes  
11 will not have a significant impact on land uses of  
12 the surrounding area.

13 The pipelines will be underground and  
14 therefore will not limit the continued uses of the  
15 area on and adjacent to the pipeline routes for  
16 the currently designated uses.

17 With regard to cumulative impacts, the  
18 development of the project is consistent with  
19 other major existing land uses in the vicinity,  
20 including the substation, transmission lines and  
21 pumping stations located nearby.

22 The project has been sited away from  
23 planned residential development. Adequate  
24 buffering from residential developments is  
25 achieved through surrounding land use.

1           The communities of Byron in Contra Costa  
2     County and the planned new town of Mountain House  
3     in San Joaquin County are at least one mile away,  
4     so the EAEC will not disrupt or divide the  
5     physical arrangement of any established community.

6           Potential impacts to the aesthetic  
7     quality of the area are mitigated as discussed in  
8     the applicant's visual resources testimony.

9           The parcel on which the power plant will  
10    be located is currently designated as a large  
11    parcel agriculture in the ECAP and measure D.  
12    Allowable uses within this category include public  
13    uses, quasi-public uses, windfarms, utility  
14    corridors and similar uses compatible with  
15    agriculture.

16           Moreover, Alameda County has determined,  
17    and I quote, "the EAEC falls within the definition  
18    of infrastructure allowable under policy 14A of  
19    the ECAP, and the electricity produced by this  
20    facility would certainly be considered a public  
21    utility." Close quote.

22           Although the project is anticipated to  
23    result in a minor loss of agriculturally  
24    productive lands, it avoids leap-frogging  
25    development that could result in the premature

1       loss of agriculture because it is sited near  
2       similar existing and planned uses.

3               The project will not preclude or unduly  
4       restrict agricultural activities on neighboring  
5       properties, or the operation of the federal and  
6       state government facilities located nearby.

7               As located in the final staff  
8       assessment, with implementation of the condition  
9       of certification LAN-7, pertaining to the payment  
10      of mitigation fees as required by the amended and  
11      restated East Altamont Energy Center farmlands  
12      mitigation agreement, potential impacts to  
13      farmland will be mitigated to a level of less than  
14      significant.

15              MR. WHEATLAND: Thank you. The panel is  
16      available for cross-examination.

17              HEARING OFFICER WILLIAMS: Thank you.  
18      Staff, do you have questions?

19              MS. DeCARLO: Staff has no direct at  
20      this time -- or no cross-examination.

21              HEARING OFFICER WILLIAMS: Mr. Sarvey.

22              Mr. Sarvey, the fax is here if you want  
23      to retrieve it.

24              MR. SARVEY: Okay.

25              HEARING OFFICER WILLIAMS: This is

1 the --

2 MR. SARVEY: This is the testimony from  
3 the other day, if you want to look it over. Thank  
4 you, Mr. Williams.

5 CROSS-EXAMINATION

6 BY MR. SARVEY:

7 Q Will any public moneys be used in the  
8 financing and construction of the East Altamont  
9 Energy Center?

10 MR. DeYOUNG: No.

11 MS. TORRE: There are no plans for  
12 financing at this time. I have no idea. What I  
13 mean is the project is not even licensed, so we  
14 have not started to initiate any work on  
15 financing.

16 MR. SARVEY: So will you be trying to  
17 pass a bond measure requiring any type of public  
18 financing?

19 MS. TORRE: We have no ability to pass a  
20 bond measure.

21 MR. SARVEY: Thank you. Are there some  
22 kind of tax incentives or investment credits that  
23 make this project profitable for you?

24 MR. WHEATLAND: I'd like to object at  
25 this point. I just simply don't see the relevance

1 of the question to land use.

2 HEARING OFFICER WILLIAMS: I think we're  
3 going to sustain that objection.

4 MR. SARVEY: Have you examined the laws,  
5 ordinances, regulations and standards of the San  
6 Joaquin County in relation to this project?

7 MR. DeYOUNG: Yes, as they applied to  
8 the linear recycled water pipeline route.

9 MR. SARVEY: So you haven't examined any  
10 laws, ordinances, regulations and standards  
11 relating to anything other than the recycled water  
12 pipeline, correct?

13 MR. DeYOUNG: No, that's the only  
14 project element that's located in San Joaquin  
15 County.

16 MR. SARVEY: So there's no other linears  
17 that are crossing San Joaquin County, is that  
18 correct? Gas? Anything?

19 MS. TORRE: That is correct.

20 MR. SARVEY: On page 2.5-5 of your  
21 testimony under the area of mitigation you say  
22 that the East Altamont Energy Center site and  
23 related facilities may have an impact on the  
24 supply of agricultural farmlands and other open  
25 space in eastern Alameda County, is that correct?



1 MR. DeYOUNG: That's what it says, yes.

2 MR. SARVEY: If the mitigation you  
3 propose in this farmland mitigation agreement does  
4 not materialize, do you see that as a significant  
5 impact under CEQA?

6 MR. DeYOUNG: We are confident that it  
7 will materialize as Mr. Martinelli with the County  
8 has already testified.

9 MR. SARVEY: Nothing further, thank you.

10 HEARING OFFICER WILLIAMS: Anything  
11 further, Mr. Wheatland?

12 MR. WHEATLAND: No redirect.

13 HEARING OFFICER WILLIAMS: Okay.

14 Okay, Mr. Sarvey, we're going to take a  
15 lunch break before you put on your witness, if  
16 that's okay.

17 MR. SARVEY: Great.

18 MR. WHEATLAND: May I ask, though,  
19 please, as a courtesy to the Modesto Irrigation  
20 District that's here, could we hear from them  
21 before the lunch break so --

22 HEARING OFFICER WILLIAMS: Yes, that's  
23 the Committee's intent.

24 MR. WHEATLAND: Oh, great, okay.

25 HEARING OFFICER WILLIAMS: And I think

1 we probably want to hear the public comment, as  
2 well.

3 MR. WHEATLAND: Oh, yeah, and --

4 HEARING OFFICER WILLIAMS: For the  
5 people who are here.

6 MR. WHEATLAND: Also, may I move into  
7 evidence exhibit 4B at this time?

8 HEARING OFFICER WILLIAMS: Any  
9 objection?

10 MS. DeCARLO: No objection.

11 MR. SARVEY: No objection.

12 HEARING OFFICER WILLIAMS: So moved.  
13 Thank you, Mr. Wheatland.

14 Okay, at this time we will hear from the  
15 Modesto Irrigation District, public comment.  
16 That's fine.

17 MR. FRANCIOSO: Good afternoon.

18 HEARING OFFICER WILLIAMS: Good  
19 afternoon.

20 MR. FRANCIOSO: My name is Ed Francioso  
21 and I represent the Modesto Irrigation District.  
22 And I just have a brief statement here to read.

23 MID had been performing a transmission  
24 study to determine the effects of the EAEC project  
25 on the MID system. The preliminary study results

1 indicate significant impact on some parts of MID's  
2 230 kV and 69 kV systems.

3 The study performed by Western  
4 incorporated in the CEC documents did not evaluate  
5 the MID 69 kV system.

6 Our study also indicates a significant  
7 increase in loading at one of our 230 kV intertie  
8 stations, much higher than what is shown in the  
9 Western study. We've been discussing this issue  
10 with Calpine and expect to address these issues in  
11 a satisfactory manner.

12 However, should we not be able to get  
13 these issues resolved, we would like the  
14 Commission to impose suitable mitigation measures.

15 HEARING OFFICER WILLIAMS: Did you bring  
16 any proposals to us in that regard, with regard to  
17 the --

18 MR. FRANCIOSO: Well, no. Like I said,  
19 we're just working on the study. It's still in  
20 draft mode. There were some issues that I think  
21 we can resolve with Calpine, but since the  
22 hearings are taking place right now we felt it was  
23 necessary to just bring it to the Commission's  
24 attention.

25 HEARING OFFICER WILLIAMS: Okay.

1                   COMMISSIONER PERNELL:  And your issue is  
2                   whether or not there's adequate transmission  
3                   lines?

4                   MR. FRANCIOSO:  The issue is there are  
5                   some single contingency overloads.  If certain  
6                   elements are out of service they overload some of  
7                   our facilities.  And that's the issue that we're  
8                   bringing up.

9                   COMMISSIONER PERNELL:  So that if  
10                  there's a -- I'm just trying to understand the  
11                  issue.  In normal circumstances it would not be an  
12                  overload, so you're saying that if there's a  
13                  disruption somewhere that could overload your  
14                  switching stations --

15                  MR. FRANCIOSO:  Our facilities.

16                  COMMISSIONER PERNELL:  -- your  
17                  facilities?

18                  MR. FRANCIOSO:  Correct.

19                  COMMISSIONER PERNELL:  Okay.

20                  HEARING OFFICER WILLIAMS:  Okay, sir, we  
21                  appreciate --

22                  MR. FRANCIOSO:  Thank you.

23                  HEARING OFFICER WILLIAMS:  -- your  
24                  comment.

25                  Now the next matter that we have is the

1 Committee would prefer to take the full public  
2 comment after we've completed the land use  
3 section. However, if there are people from the  
4 public who would like to offer comment now because  
5 of some other commitment or what-have-you, the  
6 Committee will entertain that request.

7 If you'd come forward to the microphone.

8 MS. LEIGHTON: Hi.

9 HEARING OFFICER WILLIAMS: Hi.

10 MS. LEIGHTON: I'm Kathy Leighton, I'm  
11 from Byron. And I serve presently on the Byron  
12 MAC, the Contra Costa County ALUC, Airport Land  
13 Use Commission, and the habitat study that is  
14 going on in Contra Costa County.

15 And wanted to be here today to offer my  
16 support to Calpine. And I've been watching this  
17 project as it's gone along for the last two and a  
18 half years.

19 And a couple of things have happened.  
20 One, the MAC wanted to be sure that it was known  
21 how much we appreciate the information that  
22 Calpine has kept up abreast through the entire  
23 project. And would like to urge the Commission to  
24 push this forward and to pass it.

25 Also, not only do I live in Byron now,

1 but my great-grandparents homesteaded what is now  
2 the Byron Airport in the 1860s. And my grandkids  
3 are seven generations there. So it's -- we have a  
4 vested interest in the community, and see this as  
5 a really positive thing for east County.

6 Thank you.

7 PRESIDING MEMBER KEESE: Thank you.

8 COMMISSIONER PERNELL: Thank you.

9 HEARING OFFICER WILLIAMS: Thank you.

10 Any other public comment at this time?

11 MR. LESCHINSKY: My name is Gene  
12 Leschinsky, L-e-s-c-h-i-n-s-k-y. I live at  
13 Livermore Yacht Club, which is directly west of  
14 the proposed site.

15 And in talking to Dave I don't really  
16 see a real big problem, other than having the  
17 thing there. We all need it. I think that with  
18 the energy crisis that we did have everybody was  
19 complaining about the blackouts, and rolling  
20 blackouts.

21 And as far as where we're concerned, we  
22 would be closer to any fallout of anything that's  
23 going on. We're only like less than a --

24 HEARING OFFICER WILLIAMS: We just had a  
25 Bill Gates intrusion.

1                   PRESIDING MEMBER KEESE: That's the  
2 organ music.

3                   (Laughter.)

4                   MR. LESCHINSKY: Oh, okay.

5                   HEARING OFFICER WILLIAMS: It's  
6 temporary, I'm sorry.

7                   MR. LESCHINSKY: Yeah, that's all right.  
8 Well, our main concern was the disposal of the  
9 water that they're using to recycle water, which I  
10 think is great that they're using recycled.

11                  I live right on the Delta and that's my  
12 playground, and I don't want it ruined by anything  
13 that's going to be developed in there. With what  
14 they're talking about it's all recycled. It's  
15 contained. There's no problem that way. That's  
16 what we were concerned about.

17                  We're more concerned about Mountain  
18 House, itself, when they're going to dispose of  
19 their water out of their sewer plant. As long as  
20 it doesn't reach the water and it's clean.

21                  The other thing with it is they're  
22 talking about the air pollution. From what we're  
23 understanding we're not in a real problem of air  
24 pollution or noise.

25                  I lived next to a lumber mill when I was

1 up in the mountains. There's a certain amount of  
2 noise that you're going to get out of anything.  
3 People live near airports; people live near other  
4 factories. And you get used to the noise. But  
5 from my understanding with Dave is that the noise  
6 isn't going to be any louder than what we are here  
7 right now, that we would get from that.

8 If the wind's blowing the right  
9 direction I hear the Altamont "speedway". We hear  
10 the cars going up and down the road. So I don't  
11 feel that it's an impact.

12 I feel that they're a very well  
13 worthwhile organization coming in. I've dealt  
14 with them up in Plumas County. And I have no  
15 problems with what they're doing. I think it's a  
16 well needed proposal and hope you go with it.

17 Thank you.

18 HEARING OFFICER WILLIAMS: Thank you.

19 COMMISSIONER PERNELL: Thank you.

20 PRESIDING MEMBER KEESE: Thank you.

21 MR. PAPADAKOS: Good afternoon, thank  
22 you. Sorry I couldn't stay last week, I have a  
23 96-year-old mother I live with. I had do a little  
24 change of bandage.

25 PRESIDING MEMBER KEESE: Your name for



1 the record, please?

2 MR. PAPADAKOS: Nick Papadakos from  
3 Byron, a native, entry class of 1928.

4 HEARING OFFICER WILLIAMS: You might  
5 want to spell that.

6 MR. PAPADAKOS: P-a-p-a-d-a-k-o-s, just  
7 like it sounds.

8 (Laughter.)

9 MR. PAPADAKOS: Good Irish name. No.  
10 Anyhow, like I said, I'm a native of Byron. I  
11 live just out of Byron there. And I'm also a  
12 Director of the Byron Municipal Advisory Council.

13 I was with a volunteer fire department  
14 at that time for 41 and a half years, from '68 to  
15 '91, I was the Fire Chief out there for Byron-  
16 Discovery Bay.

17 We've been following this applicant,  
18 Calpine, there. And I want to say that I have no  
19 problem with them. They're not the new kid on the  
20 block. They've been around for quite awhile.

21 As fallout we do have the upper air  
22 current once in awhile, maybe several times a year  
23 air comes our way from Mountain House. But I  
24 don't see any big problem with that.

25 So, to get to the point, I fully support

1 the plant. And I hope the Commission approves the  
2 permit. Thank you.

3 PRESIDING MEMBER KEESE: Thank you.

4 HEARING OFFICER WILLIAMS: Thank you,  
5 sir.

6 MR. CAMPBELL: How are you doing?  
7 Temple Campbell, Tracy residents for about 11  
8 years now.

9 I was kind of curious, I had a couple of  
10 questions regarding the visual aspects. I bought  
11 a new house here in Tracy, and when I first bought  
12 it and it was being built I had a beautiful view  
13 of the hills. But as construction went on I found  
14 that instead of seeing the hills I saw the other  
15 houses in the neighborhood.

16 So, as far as visual aspects, you know,  
17 the neighborhoods for Mountain House, won't they,  
18 with these two-story houses being built, not see  
19 any of this? I mean the hills, anything, Mount  
20 Diablo? I don't see it from my house anymore, nor  
21 anything else other than other houses.

22 And then as far as farmland, what is  
23 Mountain House being built on now? And the rest  
24 of Tracy houses that are being built. I mean,  
25 it's got to be built somewhere. I'm an

1 electrician and I live in the area. And I would  
2 love to just be able to drive right over there and  
3 work. It needs to be done.

4 I mean the mentality of not-in-my-  
5 backyard, then whose? Right? Thank you.

6 PRESIDING MEMBER KEESE: Thank you.

7 COMMISSIONER PERNELL: Are you in favor  
8 of the plant?

9 MR. CAMPBELL: I am in favor of the  
10 plant, yes. I think it needs to be done. I think  
11 that we need to be able to build new cleaner  
12 plants and start getting rid of the old ones and  
13 some of their emissions.

14 And we might consider looking at 205 for  
15 pollution, rather than this plant. With the  
16 people backed up there every single day. I'd be  
17 interested to know how much pollution that is.

18 PRESIDING MEMBER KEESE: Thank you.

19 Anybody else before we take a break for lunch?

20 Come forward, please.

21 MR. ROBINSON: My name is Ron Robinson.  
22 I've been a resident in the area since 1981,  
23 Livermore Yacht Club, which is right at the end of  
24 Lindeman Road. I'm also an owner of the River's  
25 End Marina, which is about half way up -- about

1 one mile up Lindeman Road.

2 I'm in support of the Energy Center.  
3 One of the reasons that I'm in support of it, it  
4 is designed to use recycled water. Mountain House  
5 is going to generate a significant amount of  
6 recycled water.

7 I'm right at the intersection of Old  
8 River and Grant Line Canal, and I do not want all  
9 that recycled water being dumped into Old River,  
10 particularly if this plant can use any and all  
11 that can be provided.

12 It uses the latest technology to  
13 generate electricity, and efficiency in the  
14 technology to reduce emissions. I know that  
15 there's a lot of other very inefficient and high  
16 polluting plants. The more that we can bring  
17 these online, the faster we can get rid of those  
18 other.

19 I understand that there's been an  
20 agreement with the San Joaquin Air Pollution  
21 Control District to fund a lot of local emission  
22 reduction programs. Whether we're in Alameda  
23 County or San Joaquin County, we're all affected  
24 by all the pollution that's being generated. New  
25 Mountain House city is planning 2000 or 20,000

1 cars and a whole bunch of other. And the more  
2 that we can fund local emission policies or  
3 changes, the better off we'll be in this Valley.

4 Calpine is a California-based company.  
5 I believe that they have their interests in  
6 California. Two years ago, or when we had these  
7 blackouts, we didn't have enough generating  
8 capabilities. We were buying it out of state.  
9 The more that we can generate in-state, the better  
10 off we're going to be next time, not held hostage  
11 to out-of-state concerns.

12 The location makes sense. It's right  
13 there where you already have the substation. It  
14 makes sense because you also have pressurized gas  
15 pipeline. If we're really talking about dollars  
16 and cents, you need to look at these kind of  
17 things. I'm not particularly interested in seeing  
18 more high voltage lines out there, but they're  
19 already there. It's going to obstruct the view  
20 only slightly.

21 Lastly, I think we should keep jobs in  
22 our local area. This is going to generate lots of  
23 revenue for jobs. As the gentleman here in the  
24 trades said, we need to keep that local. And the  
25 more that we can do that the better off we'll be.

1 Thank you.

2 HEARING OFFICER WILLIAMS: Thank you,

3 sir.

4 COMMISSIONER PERNELL: Thank you.

5 PRESIDING MEMBER KEESE: Thank you.

6 Anyone else?

7 All right, we will hear more public

8 comment on each issue as we close the issues.

9 With that, we'll get back to Mr. Sarvey and his

10 witness. But we'll have lunch first. Thirty

11 minutes.

12 (Whereupon, at 12:31 p.m., the hearing

13 was adjourned, to reconvene at 1:00

14 p.m., this same day.)

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1 AFTERNOON SESSION

2 1:00 p.m.

3 PRESIDING MEMBER KEESE: Major.

4 HEARING OFFICER WILLIAMS: I believe  
5 we're going to pick up with Mr. Sarvey and your  
6 presentation on land use.

7 (Pause.)

8 MR. SARVEY: Could you state your name  
9 and qualifications for the record, please.

10 HEARING OFFICER WILLIAMS: Before we do  
11 that, let's swear your witness.

12 MR. SARVEY: That's a good idea.  
13 Whereupon,

14 DICK SCHNEIDER  
15 was called as a witness herein, and after first  
16 having been duly sworn, was examined and testified  
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. SARVEY:

20 Q Can you state your name and  
21 qualifications for the record, please?

22 A My name is Dick Schneider; I'm a  
23 resident of Alameda County. I was one of the  
24 coauthors of measure D. I was one of the legal  
25 proponents of the initiative, that is when it was

1 filed with the County to go on the -- for  
2 collection of signatures.

3 I was the cochair of the campaign during  
4 the election cycle. During that time I was a lead  
5 spokesperson for the initiative. I spoke at  
6 dozens of community forums, before councils,  
7 boards.

8 After the initiative passed I was part  
9 of the defense team, both helping County attorneys  
10 uphold the initiative, which it was, as well as  
11 helping the intervenors, which included the Sieraa  
12 Club, in their legal defense of the initiative.

13 Q Do you have any changes to make to your  
14 testimony today?

15 A No, I don't.

16 Q Could you briefly summarize your  
17 testimony for the Committee?

18 A Sure. I do have one -- let me amend my  
19 statement. I do have one additional statement to  
20 make with respect to my testimony, and that is I'm  
21 speaking also on behalf of the Sierra Club.

22 Between the time when my written  
23 testimony as an individual and measure D proponent  
24 was submitted, the Sierra Club passed a resolution  
25 opposing the East Altamont Energy facility, and



1 I've been authorized to speak on behalf of the  
2 Sierra Club in this regard.

3 Let me explain a little bit about the  
4 voter initiative and what was involved in creating  
5 it and what was intended by it.

6 Measure D passed in November of 2000,  
7 two years ago. It began as work within the Sierra  
8 Club in the early part of 1999 when members of the  
9 Sierra Club became concerned about a number of  
10 different development projects that were taking  
11 place in eastern Alameda County.

12 Urban sprawl was one of the types of  
13 development, but so was parcelizations that would  
14 fragment agricultural lands; quarrying, excessive  
15 quarrying; excessive landfill capacity; a number  
16 of things that the Sierra Club felt would be  
17 detrimental to the protection of the resources,  
18 the natural resources, the environmental quality  
19 and the quality of life of Alameda County  
20 residents.

21 And members of the Sierra Club began  
22 drafting an initiative in early 1999. Separate  
23 from the Sierra Club, several members, several  
24 groups in eastern Alameda County concerned about  
25 urban development issues began drafting their own

1 sets of initiatives to control growth in east  
2 Alameda County and Contra Costa County cities.  
3 Those were known as the CAP initiatives.

4 Those initiatives were on the ballot in  
5 November of 1999 and they failed. At that time,  
6 the Sierra Club, which had already filed its  
7 initiative for a title and summary, withdrew its  
8 initiative and opened up the process to a much  
9 larger extent to solicit public input before  
10 determining whether or not to go back out to the  
11 people and try and pass an initiative.

12 We held 30 to 35 public meetings between  
13 November 1999 through January of 2000 to solicit  
14 public input about what kind of an initiative  
15 should be designed, what kinds of ingredients it  
16 should have, and whether there would be public  
17 support for such an initiative, knowing that we  
18 did, that it would take an immense effort to pass  
19 it.

20 These meetings were held in public  
21 spaces and the three libraries of eastern Alameda  
22 County, in Dublin, in Livermore and in Pleasanton.  
23 We had email lists of several hundred people and  
24 word of mouth. And we typically had several dozen  
25 people come to these meetings.

1           And we began to analyze the County plan,  
2       discuss problems and try and determine what kind  
3       of an open space protection measure could be  
4       designed that would serve for the benefit of all  
5       of Alameda County. And measure D is what  
6       resulted.

7           In addition to the several dozen people  
8       or included within those several dozen people were  
9       county planning commissioners, city planning  
10      commissioners, city councilmembers,  
11      representatives of community groups, environmental  
12      groups, as well as ordinary citizens.

13          Various drafts of the initiative were  
14      sent to the county supervisors as this process was  
15      proceeding, to Mr. Martinelli. And we were in  
16      frequent contact with Supervisor Scott Haggerty in  
17      whose district the initiative primarily affects.

18          We began collecting signatures; in March  
19      of 2000 we collected over 63,000 signatures in a  
20      period of about 11 weeks. We had hundreds of  
21      volunteers on the street corners and markets.  
22      These were individuals who cared passionately  
23      about what we were doing, trying to preserve the  
24      quality of life in the County. And we made an  
25      intense effort to collect those signatures in time

1 for the November 2000 ballot, which we were able  
2 to do.

3 After the initiative qualified for the  
4 ballot, the opponents of measure D were able to  
5 get the County Board of Supervisors to put a  
6 competing measure on the ballot known as measure  
7 C.

8 Measure C would have left the Alameda  
9 County East County Area Plan intact. We know that  
10 because if it had changed the East County Area  
11 Plan it would have required an environmental  
12 impact report to be prepared.

13 So measure C was put on the ballot, in  
14 our judgment, to confuse the issue. Because  
15 simply turning down measure D would have left the  
16 plan intact. So putting something else on the  
17 ballot served a single purpose, which was to make  
18 it more difficult for measure D to pass.

19 In the fall of 2000 an intense and  
20 immense effort was made to pass measure D and to  
21 distinguish measure D and the changes that we  
22 wanted from measure C which would have left things  
23 intact. Both purported to protect open space and  
24 agricultural lands.

25 Over \$3 million was raised and spent

1 both to defeat measure D by its opponents and to  
2 support measure D by its proponents. That's the  
3 largest amount of money ever spent on a local land  
4 use ballot measure in California history.

5 Measure D got the support of over 40  
6 citizens groups, environmental groups, public  
7 officials, appointed officials, the mayors of two  
8 of the three largest cities in Alameda County.

9 After a bitterly contested election  
10 campaign measure D prevailed with 57 percent of  
11 the vote, over 243,000 citizens in Alameda County  
12 voted in favor of measure D.

13 Measure C, the competing measure,  
14 failed. It received only 43 percent of the vote.  
15 The mirror image of measure D. It was not one or  
16 the other, people had to vote n measure D and on  
17 measure C. They were clearly able to tell the  
18 difference between keeping the county plan intact  
19 and changing it to protect open space, natural  
20 resources and agricultural lands to keep urban  
21 growth, urban development within the existing  
22 urbanized area within the urban growth boundary  
23 that measure D enacted.

24 After measure D passed the developers  
25 whose projects were impacted filed suit. And

1 after a year of litigation measure D was upheld in  
2 Alameda County Superior Court. The case was  
3 dismissed for lack of merit. The case is under  
4 appeal. But for now it is the ruling County  
5 ordinance. And as Mr. Martinelli has said, it has  
6 been incorporated into the current East County  
7 Area Plan that was adopted by the board of  
8 supervisors this past May.

9 The reason I go into that level of  
10 detail and history is to try and impress upon the  
11 Commission what it was that the people of Alameda  
12 County really wanted with passing measure D. It  
13 was an intense effort. It took years to get it  
14 done. It took hundreds and hundreds of volunteer  
15 hours. It took millions of dollars to pass the  
16 initiative. And it prevailed. And it was upheld  
17 in court. And it clearly represents the will of  
18 the people of Alameda County.

19 The intent, and the initiative says that  
20 these are the words of the people of Alameda  
21 County, the intent is to preserve, and I'll quote,  
22 "to preserve and enhance agriculture and  
23 agricultural lands, and to protect the natural  
24 qualities, the wildlife habitats, the watersheds  
25 and the beautiful open spaces of Alameda County

1 from excessive, badly located and harmful  
2 development."

3 It is our view, the Sierra Club's view,  
4 speaking on behalf of the Measure D Committee, and  
5 I believe on behalf of the citizens of Alameda  
6 County, that this power plant project does not  
7 conform to the intent of the voters' will, the  
8 express will in passing measure D in November of  
9 2000.

10 The project is to be sited on lands  
11 designated by the County general plan as large  
12 parcel agriculture. Large parcel agriculture is a  
13 land use designation intended for agricultural  
14 uses.

15 In addition to growing crops or grazing,  
16 it permits uses that support agriculture. Such  
17 things as animal feed facilities, silos, stables,  
18 agricultural processing facilities, -- yes?

19 HEARING OFFICER WILLIAMS: What are you  
20 reading from?

21 MR. SCHNEIDER: I'm reading -- sorry,  
22 I'm reading from measure D.

23 PRESIDING MEMBER KEESE: You know, we  
24 know it passed.

25 MR. SCHNEIDER: Yeah.

1                   PRESIDING MEMBER KEESE: And the  
2 question has come up whether this is in  
3 conformance. I gather that's what you're going --

4                   MR. SCHNEIDER: That's correct.

5                   PRESIDING MEMBER KEESE: -- you're going  
6 to -- now, are you, let me frame the question.  
7 Are you asking us to ignore what the Alameda  
8 County Board of Supervisors has given us? I mean  
9 that we should -- we have a position of the  
10 Alameda County Board of Supervisors. Are you  
11 saying the people meant something else and we  
12 should ignore that?

13                  MR. SCHNEIDER: It's not clear to me  
14 that the Alameda County Board of Supervisors has  
15 passed any resolutions --

16                  PRESIDING MEMBER KEESE: Well, then --

17                  MR. SCHNEIDER: -- supporting this power  
18 plant.

19                  PRESIDING MEMBER KEESE: -- if you'd  
20 focus on what you're going to ask us to do here,  
21 because all indications are that Alameda County  
22 has testified that this is in conformance.

23                  MR. SCHNEIDER: I'm suggesting that it's  
24 not in conformance.

25                  PRESIDING MEMBER KEESE: Okay, and so



1       you're going to help us out with what you're going  
2       to ask us to do.

3               MR. SCHNEIDER:  What we're going to ask  
4       you to do is deny the license application.

5               PRESIDING MEMBER KEESE:  Well, are you  
6       going to ask us to ignore what we've heard from  
7       Alameda County?  Or are you going to find a crack  
8       between --

9               MR. SCHNEIDER:  I'm going to try and  
10       find the crack between --

11              PRESIDING MEMBER KEESE:  Okay.  But  
12       let's be specific as to what you're trying to --

13              HEARING OFFICER WILLIAMS:  What you're  
14       reading from is the measure, itself, part of the -  
15       - staff, is it part of your report?  Or did you  
16       quote from it?

17              MS. DeCARLO:  We did analyze it in our  
18       testimony and explain the deferral to the County's  
19       position.  And I'm not sure, we may have docketed  
20       the provisions.  I'm unclear at this point.

21              HEARING OFFICER WILLIAMS:  Well, can we  
22       get a --

23              MR. WHEATLAND:  I think I can help on  
24       this.  I believe that what Mr. Schneider is about  
25       to read to you from is the East County Area Plan,

1 as amended by measure D, is that correct?

2 MR. SCHNEIDER: That is correct. And I  
3 can read it --

4 MR. WHEATLAND: And we --

5 MR. SCHNEIDER: -- out of the East  
6 County Area Plan --

7 MR. WHEATLAND: -- we brought additional  
8 copies and we'd be happy to have a copy marked for  
9 identification.

10 HEARING OFFICER WILLIAMS: Okay, let's  
11 do that. We'll mark it as part of Mr. Sarvey's  
12 presentation, or a joint exhibit? How do you --

13 MR. WHEATLAND: Well, since it's from  
14 the County and Mr. Martinelli's being sponsored by  
15 the staff, perhaps as a staff exhibit.

16 HEARING OFFICER WILLIAMS: We'll mark it  
17 as staff's next in order. It will be 1K.

18 And thank you, Mr. Wheatland, for  
19 providing that for us.

20 Okay, --

21 MR. SCHNEIDER: If you wanted to, I can  
22 just as easily read from the County plan on page  
23 47, which describes the land use designation,  
24 large parcel agriculture.

25 I'm not going to read the whole thing,

1 but the purpose of reading from it was to point  
2 out that the designation is intended for  
3 agricultural uses, and those quasi-industrial uses  
4 such as agricultural processing facilities that  
5 support agriculture.

6 It does allow also utility corridors,  
7 quarries, windfarms, and waste management  
8 facilities. But except for those limited  
9 exceptions, it's intended for agricultural uses,  
10 open space uses, very low density residential use.  
11 It's for agriculture.

12 The voters specifically eliminated a  
13 prior provision in this designation that would  
14 have allowed industrial uses appropriate for  
15 remote areas, and determined to be compatible with  
16 agriculture. And I want to credit the staff for  
17 noting that that specific prior provision was  
18 expressly deleted by the voters of Alameda County.

19 It was our intention by doing that to  
20 eliminate industrial uses outside of the urban  
21 growth boundary except for those specific ones  
22 related to agriculture. Windfarms to the extent  
23 that a wind turbine is an industrial facility,  
24 those are still permitted.

25 But it was clearly the intent to remove

1 large -- not even large, but industrial facilities  
2 outside the urban growth boundary, and to confine  
3 those uses to within the urban growth boundary.

4 We didn't want a situation where the  
5 County could simply determine that these  
6 industrial facilities would be compatible with  
7 agriculture.

8 It is our view that an 1100 megawatt  
9 power plant is an industrial use that was stricken  
10 from the County plan outside the urban growth  
11 boundary.

12 I just want to mention that there was a  
13 specific reason that we did not eliminate a power  
14 plant specifically from this use. We debated all  
15 the kinds of uses that should be permitted inside  
16 and should be permitted outside the urban growth  
17 boundary, and we declined -- this was over several  
18 meetings, several hours -- to begin a long laundry  
19 list of the types of facilities that we thought  
20 would be appropriate within and without the urban  
21 growth boundary.

22 For one, this is a County general plan  
23 amendment, and we felt it was inappropriate to  
24 have such a long laundry list. Second, we felt  
25 that if we began making a list we would almost

1 assuredly omit something that was of importance.  
2 Our opponents would figure out what we had  
3 overlooked, and that would become the Achilles  
4 Heel of the entire initiative.

5 So we were very very clear about what we  
6 were trying to do. We wanted to provide -- we  
7 wanted to eliminate, by deleting this provision,  
8 inappropriate, nonagricultural related uses  
9 outside the urban growth boundary, but to permit  
10 those uses that do support and are related to  
11 agriculture and the other uses that continue to  
12 remain permitted under the large parcel  
13 agricultural designation.

14 Now, to be fair to Alameda County,  
15 they're not suggesting that this is an industrial  
16 use outside the urban growth boundary, although  
17 they suggest that if it were outside the urban  
18 growth boundary it just wouldn't be urban, and  
19 that it could be permitted. But they don't really  
20 go to that argument.

21 They, instead, say that this power plant  
22 is a permitted infrastructure exception. And that  
23 therefore it is permitted by measure D. But  
24 measure D is very clear about infrastructure. And  
25 I will quote from the measure, which is also

1 County policy, I think it's now number 13. It  
2 used to be 14A.

3 It's now policy 13 on page 10. "The  
4 County shall not provide nor authorize of public  
5 facilities or other infrastructure in excess of  
6 that needed for permissible development consistent  
7 with the initiative."

8 I think that sentence is very very  
9 clear. The idea was not to allow larger capacity  
10 for infrastructure than what is needed to serve  
11 the development in eastern Alameda County, allowed  
12 by the initiative.

13 The idea was to keep infrastructure  
14 capacity sized appropriately to the level of  
15 growth that was being contemplated and that was  
16 allowable under the initiative.

17 When facilities are overly sized they  
18 induce additional growth, and it was the intent of  
19 the framers of measure D and of the voters in  
20 passing measure D to keep infrastructure sized  
21 appropriately to the level of growth allowed by  
22 the initiative. And that is within eastern  
23 Alameda County, which these amendments apply.  
24 Eastern Alameda County, this is an amendment to  
25 the East County Area Plan.

1           How big of a new infrastructure facility  
2           is needed to serve growth under the initiative?

3           The population of eastern Alameda County is about  
4           170,000 people now. ABAG projects by 2025 that  
5           that growth may reach 275,000 people. So about  
6           another 100,000 people. Actually I think I have  
7           my numbers incorrect. Let me -- 250,000 people.  
8           From 170,000 to 250,000 people according to ABAG  
9           projections 2002.

10           That's 80,000 new residents in eastern  
11           Alameda County. If a power plant needed to be  
12           built to provide electricity services for eastern  
13           Alameda County's growth, it would need to be sized  
14           to serve 80,000 people.

15           This power facility, in my prepared  
16           testimony I said it was sized to serve 750,000  
17           people, but Calpine's news releases suggest that  
18           it's actually sized to serve enough energy to  
19           power one million homes.

20           In other words, it's an order of  
21           magnitude larger than is necessary to serve growth  
22           in eastern Alameda County.

23           Even if one were to say it was to be  
24           built to serve all of eastern Alameda County, not  
25           just the new growth that is projected, but all

1 250,000 residents, then it's either four times too  
2 large based on Calpine's sizing, or it's three  
3 times based on what I thought would be the  
4 appropriate size to serve 750,000 people.

5 Under an infrastructure exemption this  
6 power plant is much much larger than is permitted  
7 by measure D. Again, --

8 PRESIDING MEMBER KEESE: Is there a  
9 power plant currently serving eastern Alameda?

10 MR. SCHNEIDER: Is there a current --

11 PRESIDING MEMBER KEESE: Is there a  
12 current power plant that's sited in eastern  
13 Alameda County?

14 MR. SCHNEIDER: I'm not -- not that I'm  
15 aware of, but maybe Mr. Martinelli -- not that I'm  
16 aware of.

17 PRESIDING MEMBER KEESE: No. I thank  
18 you.

19 MR. SCHNEIDER: Even if one were to  
20 suggest that power plants in eastern Alameda  
21 County should serve growth of all of Alameda  
22 County, the western growth, as well, it is much  
23 too large as infrastructure.

24 ABAG 2000 projections 2002 suggest that  
25 Alameda County is projected at 275,000 people by



1       2025. Again, that is one-third or one-quarter of  
2       the number of people that this power plant is  
3       expected to be able to service.

4               So it's clear to me that this project is  
5       not permitted outside the urban growth boundary as  
6       an industrial use. And it's much much too large  
7       to go under the infrastructure exemption that  
8       measure D provides to provide adequate service for  
9       eastern Alameda County.

10              Those are the primary reasons why this  
11       project violates both the intent and the letter of  
12       measure D. In addition, there are other East  
13       County Area Plan policies that I believe are  
14       violated, or that this project would violate, in  
15       fact.

16              And that is policy 72 in the current  
17       version; used to be policy 76. States that the  
18       County shall preserve the Mountain House area for  
19       intensive agriculture. Yet this power plant will  
20       take agricultural land out of production in the  
21       Mountain House area, and once out of production,  
22       once developed agricultural, it will never be used  
23       for the intensive agriculture that's contemplated  
24       in policy 72.

25              The mitigation funds that are being

1 talked about almost certainly will not be used in  
2 the Mountain House area. They'll be used  
3 elsewhere in Alameda County. There's nothing in  
4 policy 72 that suggests that mitigation funds to  
5 be used outside the Mountain House area will in  
6 any way preserve the Mountain House area for  
7 intensive agriculture.

8 As Mr. Sarvey has said earlier, measure  
9 D ought to be sufficient to protect these lands  
10 for agriculture if the letter and the spirit of  
11 the measure are properly carried out. And  
12 mitigation funds are not necessary for that  
13 purpose.

14 Finally, I believe that there are other  
15 important public policy considerations that the  
16 Commission should consider in making its final  
17 decision. And I want to point to the Commission's  
18 own staff reports, not in this power plant  
19 application, but in its 2002 to 2012 Electricity  
20 Outlook Report.

21 HEARING OFFICER WILLIAMS: Do you have  
22 copies of that?

23 MR. SCHNEIDER: I don't have copies of  
24 the report. I have a copy of the title page and  
25 the relevant pages.

1                   MR. WHEATLAND: It's cited in his direct  
2 testimony.

3                   MR. SCHNEIDER: It is cited in my  
4 testimony.

5                   MR. SCHNEIDER: There are really two  
6 public policy issues that I think are important.  
7 Let me just read from the Commission Staff's  
8 report.

9                   The siting trends observed since the  
10 electricity system was restructured raise concerns  
11 about the future environmental performance of the  
12 electricity system.

13                   First developers appear to favor new  
14 greenfield sites rather than cleanup and reuse of  
15 existing power plant sites. Reuse of existing  
16 sites would be expected to improve system energy  
17 efficiency, reduce air emissions, water supply and  
18 quality impacts, and improve visual aesthetics.

19                   Those are all very important  
20 environmental considerations. I certainly believe  
21 the voters of Alameda County took those thoughts  
22 to heart, not specifically stated as such, in  
23 trying to protect their environment for their own  
24 benefit and for the benefit of future generations.

25                   The second implication of this power

1 plant and of the trend in power plant siting is  
2 that, quote, "power plant developers favor natural  
3 gas fired generation capacity which raises  
4 concerns regarding lack of fuel diversity, system  
5 reliability and the cost of electricity."

6 And I think events of these last couple  
7 years and months, and including the recent guilty  
8 plea of an Enron official to manipulating the  
9 availability of power in the state indicate what  
10 happens when we become evermore reliant on a  
11 single source of fuel, particularly an important  
12 source of fuel.

13 I think the Commission should take these  
14 public policy considerations into account when  
15 making their decision on how to site new power  
16 plants. They should site those power plants in  
17 existing developed areas, rather than in  
18 greenfields, for the environmental benefits. And  
19 they should certainly move away from additional  
20 reliance on large central station natural gas  
21 fired power plants for the economic and security  
22 and reliability implications that the Commission  
23 Staff has previously identified.

24 So, in summary, I think the Commission  
25 should oppose, deny this particular application.

1 As infrastructure it is much too large and  
2 violates measure D. As an industrial use, which I  
3 believe it is, it is not permitted in the large  
4 parcel agricultural designation.

5 Thank you.

6 HEARING OFFICER WILLIAMS: Thank you,  
7 sir.

8 PRESIDING MEMBER KEESE: Thank you.

9 HEARING OFFICER WILLIAMS: Cross?

10 MR. WHEATLAND: A few questions, yes.

11 HEARING OFFICER WILLIAMS: Yes.

12 MR. SARVEY: Can I ask one more thing?

13 HEARING OFFICER WILLIAMS: Oh, I'm  
14 sorry, Mr. Sarvey. Go right ahead.

15 BY MR. SARVEY:

16 Q And can you describe for the people in  
17 this room how much money you're getting paid today  
18 for your testimony?

19 A Zero.

20 Q Is it true that that's twice as much as  
21 I'm getting for this whole thing?

22 (Laughter.)

23 MR. SCHNEIDER: Five times more.

24 MR. SARVEY: Thank you. Mr. Wheatland.

25 MR. WHEATLAND: Thank you, Mr Sarvey.

## 1 CROSS-EXAMINATION

2 BY MR. WHEATLAND:

3 Q Mr. Schneider, I'd like to begin by  
4 being clear as to who you're testifying on behalf  
5 of. I believe you testified that you're  
6 authorized to testify on behalf of the Sierra  
7 Club, is that correct?

8 A That is correct.

9 Q Would you tell us, please, how you were  
10 authorized to speak on behalf of the Sierra Club?

11 A Certainly. I'm the Conservation Chair  
12 of the Bay Chapter of the Sierra Club. I'm a  
13 member of the chapter's energy committee. And I  
14 brought this matter to the attention of the energy  
15 committee, which passed a recommendation that the  
16 Sierra Club opposed this power plant project.

17 That recommendation was taken up by the  
18 conservation committee, which endorsed that  
19 recommendation. And passed that to the chapter's  
20 executive committee.

21 The chapter's executive committee  
22 adopted that resolution last Monday, the Monday  
23 before last. And authorized me to present  
24 testimony to that effect on behalf of the Sierra  
25 Club.

1           The Sierra Club is one organization, and  
2       when policy is adopted, consistent with national  
3       Sierra Club policy, by a local jurisdiction, then  
4       one is speaking on behalf of the entire Sierra  
5       Club.

6           Q     And you believe your testimony today is  
7       consistent with national policy, is that correct?

8           A     Yes, I do.

9           Q     Okay, we'll come back to that. But at  
10      least I understand your authorization came from  
11      the Bay Chapter of the Sierra Club, is that  
12      correct?

13          A     That's correct.

14          Q     Now, is it your testimony that the large  
15      parcel agricultural designation permits public and  
16      quasi-public uses?

17          A     It does.

18          Q     Okay. And are public uses, as you would  
19      interpret measure D, are they synonymous with  
20      public facilities?

21          A     I don't know that they'd be synonymous.  
22      Clearly there would be a large overlap between a  
23      public use and a public facility.

24          Q     Can you think of a public facility that  
25      would not also include a public use?

1           A     Not offhand, but perhaps as we go along  
2 something will come to me.

3           Q     Policy 54 defines public facilities,  
4 that's at page 18, is that correct?

5           A     Correct.

6           Q     And public facilities are defined here  
7 as e.g., limited infrastructure, hospitals,  
8 research facilities, landfill sites, jails, et  
9 cetera, is that correct?

10          A     That's correct.

11          Q     And what does the use of e.g. and the  
12 use of et cetera indicate to you in this  
13 definition?

14          A     Well, it indicates the same problem that  
15 the drafters of measure D had in wrestling with  
16 whether or not to enumerate all possible things  
17 that we could think of as permitted uses within  
18 and without the urban growth boundary.

19                That is, it's very difficult to come up  
20 with an exhaustive definitive list. And so you  
21 give representative ideas, representative  
22 categories, examples. But that list is not  
23 complete. It's not exhaustive.

24          Q     So, for example, even though schools are  
25 not listed under public facilities, you'd agree,



1 would you not, that a school is a public facility?

2 A I would.

3 Q And how about a water treatment  
4 facility?

5 A I agree that that would be a public  
6 facility.

7 Q Is it your testimony that to be a public  
8 facility it must be publicly owned?

9 A No.

10 Q Is it your testimony that to be a public  
11 facility the use must be clearly compatible with  
12 agriculture?

13 A No.

14 Q And is it your testimony that to allow  
15 public -- is it your testimony that public  
16 facilities are only those that truly serve the  
17 needs of east County?

18 A Repeat the question?

19 Q Is it your testimony that public  
20 facilities are only those which truly serve the  
21 needs of east County?

22 A I think that primarily that's the intent  
23 of the East County Area Plan's public facilities  
24 use and definitions. But clearly there are some  
25 public facilities that serve all of Alameda

1 County, such as the waste authorities landfill.

2 Q And how are quasi-public uses defined in  
3 measure D?

4 A They're not defined in measure D any  
5 more than they're defined in the East County Area  
6 Plan prior to measure D.

7 Q Now, you've testified, I believe,  
8 earlier that in your opinion measure D would limit  
9 the size of any additional generating capacity in  
10 east County to that necessary to serve 80,000  
11 people, is that right?

12 A One could argue that it could serve the  
13 entire population of east County, perhaps 250,000  
14 people.

15 Q All right. Now, which would you argue?

16 A Personally I would argue the smaller  
17 number since the current residents have  
18 electricity services.

19 Q And that, you believe, is the correct  
20 interpretation of measure D?

21 A Speaking as an individual, yes.

22 Q Okay. Now how did you come about the  
23 figure 80,000?

24 A That's the difference between the 2000  
25 population and the 2025 projected population

1       offered by the latest projection of the  
2       Association of Bay Area Governments.

3           Q     Does measure D provide any guidance on  
4       how a facility would be sized to meet that growth  
5       of that number of people?

6           A     It does not provide numerical criteria.

7           Q     Does it provide non-numerical criteria?

8           A     It says it should -- the County shall  
9       not provide nor authorize public facilities or  
10      other infrastructure in excess of that needed for  
11      permissible development consistent with the  
12      initiative.

13                So I think clearly one has to look at  
14      how much growth is projected to take place, and  
15      ask, how much in the way of public services,  
16      infrastructure services, need to be supplied by  
17      that level of growth.

18          Q     And the measure itself doesn't provide  
19      any guidance at all with respect to how to size  
20      that level of service, does it?

21          A     No, it does not.

22          Q     For example, it doesn't tell us whether  
23      the plant should be sized to meet baseload or peak  
24      needs, does it?

25          A     Certainly the measure, the East County

1 Area Plan anywhere does not suggest power plant  
2 sizing, whether to meet baseload or peak.

3 Q Now, do you understand that power plants  
4 don't operate continuously and some period of the  
5 year must be shut down for maintenance?

6 A Certainly.

7 Q All right. And how would measure D  
8 accommodate that fact if the facility is sized  
9 precisely to meet the amount of incremental growth  
10 within its service area?

11 A Well, one could certainly argue that a  
12 capacity factor could be factored in to allow for  
13 down time.

14 Q Well, a capacity factor won't do any  
15 good if the plant's not operating --

16 A Well, would it rely -- I'm not sure any  
17 longer. It's been awhile studying these terms.  
18 One can make, I'm sure there's an average  
19 reliability factor, capacity factor, whatever the  
20 technical term is, that factors in the amount of  
21 out-of-service time that power plants are,  
22 compared to their rated capacity.

23 Q Now, on page 6 you state all existing  
24 residents currently are served with electrical  
25 power, is that correct?

1           A     Yes.  And I believe that's true.

2           Q     All right, and from where do these  
3 residents receive their electricity?

4           A     I believe they receive it primarily from  
5 Pacific Gas and Electric Company.

6           Q     Do they receive the electricity from  
7 generation within the east County?

8           A     Not to my knowledge.

9           Q     Do they receive the electricity from  
10 generation within Alameda County?

11          A     I'm not sure.

12          Q     You're not sure where the power comes  
13 from?

14          A     I'm not sure if there are any power  
15 plants within Alameda County that are serving the  
16 east County residents.

17          Q     Are you aware of any power plants within  
18 Alameda County?

19          A     I personally am not, but I have not  
20 looked to see where power plants are sited around  
21 the state, or even in the county, so I just am  
22 unaware of the answer.

23          Q     And so the resolution you drafted for  
24 the Sierra Club Bay Chapter was without any  
25 knowledge of where the generation for electricity

1 comes that serves Alameda County, is that correct?

2 A Without any knowledge? No, I wouldn't  
3 say without any knowledge. But without specific  
4 knowledge of the individual power plants that  
5 Alameda County residents draw from, that is true.

6 Q Well, assuming for a moment, that there  
7 isn't generation --

8 MR. WHEATLAND: Mr. Sarvey, would you  
9 like to share with us what you just shared with  
10 the witness?

11 MR. SARVEY: I said hello.

12 MR. WHEATLAND: Okay.

13 BY MR. WHEATLAND:

14 Q You're under oath, Mr. Schneider, would  
15 you like to share with us what Mr. Sarvey just  
16 told you?

17 A No.

18 Q Now assuming that there isn't sufficient  
19 generation within Alameda County to meet the needs  
20 of Alameda County residents, would it be correct  
21 to assume that some other jurisdiction is  
22 generating electricity in excess of its needs?

23 A I would say that's probably correct.

24 Q And what do you think would happen if  
25 each jurisdiction in California, each city and

1 county, or each area of a county were to follow  
2 the lead of measure D and limit electrical  
3 generation within their jurisdiction to that which  
4 served only their own needs?

5 A Well, we're talking about facilities  
6 outside the urban growth boundary. Measure D does  
7 not suggest that power plants cannot be built in  
8 the -- within the urban growth boundary within the  
9 existing developed areas of Alameda County that  
10 may exceed the projected or the existing needs of  
11 Alameda County residents.

12 Q But if Alameda voters are able to  
13 determine that they don't want power plants  
14 outside of the specified boundary, couldn't they  
15 also determine that they don't want them inside  
16 the specified boundary?

17 A Could they? I imagine they could, but  
18 I'm not sure.

19 Q All right, and assuming that they could,  
20 and each jurisdiction in California were to follow  
21 the measure D example and limit generation only to  
22 that which would meet the needs of their own  
23 residents, what would happen to our electrical  
24 generation system?

25 A Well, first of all I reject the

1       assumption because that's not anything like what  
2       measure D provides. It only provides for outside  
3       the urban growth boundary infrastructure can only  
4       be built to meet the needs of the area.

5               But, other than that, aside from  
6       rejecting the assumption, I have no idea what the  
7       possible outcome of your hypothetical would be.

8               Q     Okay. At pages 9 and 10 you speak of  
9       the advantages of repowering older power plants or  
10      using other already-developed locations, is that  
11      correct?

12              A     I believe I was quoting the Energy  
13      Commission's report, yes.

14              Q     But that's a position you would  
15      advocate, is that correct?

16              A     I would eventually, but not as the first  
17      priority for alternative sources of energy, yes.

18              Q     Now, the Potrero Power Plant is in the  
19      City of San Francisco. Has the Bay Chapter of the  
20      Sierra Club taken a position with respect to the  
21      repowering of the Potrero Power Plant?

22              A     I'm not sure.

23              Q     I have just one more question on the  
24      East County Area Plan, and then I'd like to turn  
25      and ask you a few questions about the resolution.



1           On the East County Area Plan I'd like  
2   you to turn to page 68 under utilities, please.

3           A     Yeah.

4           Q     Policy 285.

5           A     Okay.

6           Q     Would you read that into the record,  
7   please?

8           A     "The County shall facilitate the  
9   provision of adequate gas and electric services  
10   facilities to serve existing and future needs,  
11   while minimizing noise, electromagnetic and visual  
12   impacts on existing and future residents."

13          Q     Thank you. Now, I'd like to ask you a  
14   few questions about the resolution. And in order  
15   to do so I want to show you another resolution.  
16   This is a resolution by the Sierra Club Loma  
17   Prieta Chapter. And this was adopted by the  
18   chapter in reference to the Metcalf Energy Center.

19                The reason I'm showing you this  
20   resolution is that I think you've told us that  
21   when one chapter adopts a resolution, that that  
22   resolution speaks on behalf of the entire  
23   organization.

24                So, I'd like to --

25                MR. SARVEY: I'm going to have to object.

1 BY MR. WHEATLAND:

2 Q -- reconcile, if I could, --

3 MR. SARVEY: I have to object.

4 HEARING OFFICER WILLIAMS: Let Mr.  
5 Wheatland finish.

6 BY MR. WHEATLAND:

7 Q -- I'd like to reconcile, if I could,  
8 what you were representing today as the position  
9 of the Sierra Club with this other resolution,  
10 which appears to be the position of the Sierra  
11 Club.

12 HEARING OFFICER WILLIAMS: Okay, Mr.  
13 Sarvey, you have an objection?

14 MR. SARVEY: The witness is testifying  
15 to measure D. He's not testifying to the  
16 resolution. So the Loma Prieta resolution is  
17 irrelevant.

18 MR. WHEATLAND: I would stipulate to  
19 that.

20 HEARING OFFICER WILLIAMS: Okay, the  
21 objection is overruled. I think Mr. Wheatland has  
22 stated that the reason he's asking questions about  
23 the two separate resolutions is the Sierra Club,  
24 whether the local chapter represents the view of  
25 the entire organization.

1                   So we'll allow the question.

2                   The record should reflect that the  
3 parties are getting copies of the document  
4 submitted by Mr. Wheatland on the Loma Prieta  
5 Chapter.

6                   MR. WHEATLAND: And this document is the  
7 Sierra Club Loma Prieta Chapter resolution in  
8 support of the Metcalf Energy Center in San Jose.  
9 And I'd like to ask that it be identified as the  
10 next exhibit in order.

11                  HEARING OFFICER WILLIAMS: Okay, we will  
12 mark applicant's submission as 4B-1 -- excuse me,  
13 4B-2, I guess, is the next one in order.

14                  MR. SARVEY: Do you have a date for this  
15 resolution?

16                  MR. WHEATLAND: I'll see if I can get  
17 you a date. I see it's not on the document.

18                  MR. SARVEY: Do you have a date for  
19 either one of these resolutions?

20                  MR. WHEATLAND: Well, I don't have a  
21 date for -- yours was adopted 10/14/02. Actually  
22 all I'm asking for is the first page. I see  
23 there's an American Lung Association attachment,  
24 but I'm not asking that that be identified or  
25 received. I'm just asking the resolution, itself.

1 MR. SARVEY: So you're only asking for  
2 the Sierra Club Loma Prieta Chapter --

3 MR. WHEATLAND: Yes, just the Sierra  
4 Club portion of it. And I will try to get you a  
5 date.

6 HEARING OFFICER WILLIAMS: Okay, we'll  
7 excise that part of the exhibit.

8 MR. WHEATLAND: That's how I do it.

9 MS. ALLEN: I believe the date is on  
10 page 3.

11 MR. SARVEY: That's for the American  
12 Lung Association not for the Loma Prieta.

13 HEARING OFFICER WILLIAMS: Yeah, we're  
14 going to excise that part --

15 MS. ALLEN: Okay, sorry.

16 HEARING OFFICER WILLIAMS: -- that  
17 relates to the American Lung Association.

18 You may continue, Mr. Wheatland.

19 MR. WHEATLAND: Okay, thank you.

20 BY MR. WHEATLAND:

21 Q Mr. Schneider, I'm going to ask you a  
22 couple questions about just a couple of these  
23 clauses, not to belabor the point, but just to  
24 determine whether this resolution also speaks on  
25 behalf of the Sierra Club.

1           It says in the first paragraph that the  
2       Sierra Club favors energy conservation and a shift  
3       to environmentally sound renewables. It  
4       acknowledges the pressure for interim less  
5       polluting fossil fuel energy plants.

6           That's still the position of the Sierra  
7       Club today, is it not?

8           A     To the best of my knowledge.

9           Q     And it also says here that, "whereas new  
10      natural gas combined cycle power plants, such as  
11      the Metcalf Energy Center, are an enormous  
12      improvement over older plants and emergency diesel  
13      generators now running in terms of increased  
14      energy efficiency, reduction of air pollution, and  
15      reduction of greenhouse gas emissions."

16           That's still the policy of the Club  
17      today, isn't it?

18          A     As far as I know.

19          Q     It also says here that "whereas the San  
20      Jose regional area has a growing demand for  
21      electricity and is considered the most vulnerable  
22      to electricity outages in the PG&E service area"  
23      that's still the case today, is it not?

24          A     I don't know.

25          Q     You don't know. "Whereas Metcalf is

1 adjacent to high voltage transmission lines, the  
2 Pacific intertie, thus no new transmission lines  
3 are needed, this resolution recognizes that as a  
4 benefit." That's still the position of the Club  
5 today, is it not?

6 A So far as I know nothing has -- I don't  
7 know whether anything has been changed in this  
8 resolution, but I'm not specifically aware of the  
9 facts that are listed here.

10 Q All right.

11 A I have no knowledge, I did not study the  
12 Metcalf situation at all. I have no personal  
13 knowledge of it.

14 Q Are you aware that the East Altamont  
15 facility is also next to a high voltage  
16 transmission line, and thus no new transmission  
17 lines are needed?

18 A I have not studied the application to  
19 know it's technical configuration.

20 Q So when the Bay Chapter put together  
21 their resolution they didn't consider the  
22 application as a whole to analyze both the  
23 advantages and disadvantages of the project, did  
24 they?

25 A We did not look at the entire

1 application, all the documents in the record.

2 Q Did you look at the configuration of the  
3 plant?

4 A Not in detail, no.

5 Q To any degree?

6 A Certainly. We knew that it was sited at  
7 the far northeastern corner of Alameda County;  
8 that it was in the Mountain House area; that it  
9 was far outside the urban growth boundary; and  
10 that it was sized much too large to be permitted  
11 as needed infrastructure under the Alameda County  
12 general plan.

13 Q But you were not aware that it was next  
14 to the Western Substation?

15 A Not in any specifics, no.

16 Q It also says here, "whereas Metcalf will  
17 augment local existing electrical infrastructure,  
18 and is not a major part of opening up Coyote  
19 Valley to development" here the Club recognized  
20 that the plant would not have growth-inducing  
21 impacts.

22 Why did you not include that in your  
23 resolution, as well?

24 A I have not seen the Loma Prieta  
25 resolution regarding the Metcalf plant before you

1 handing it to me a few minutes ago.

2 Q The date of the resolution is September  
3 25, 2000. So if we have two resolutions from the  
4 Club, one which speaks to the advantages of a  
5 power plant and endorses it, another one which  
6 doesn't consider the advantages of a power plant  
7 and ignores it, how does the Club reconcile those  
8 differences?

9 A The Club can take positions on different  
10 projects that might seem to be at odds with each  
11 other, that is on balance determine that one  
12 project is inappropriate and a different project  
13 is appropriate.

14 The Club might even -- the Bay Chapter  
15 of the Club might even take that very position  
16 within Alameda County if there were an  
17 appropriately sited power plant sized  
18 appropriately to need and located appropriately  
19 within the urban growth boundary.

20 Q Okay. Now, finally you've testified  
21 concerning considerable experience before the  
22 California Energy Commission. I believe you have  
23 testified even before the Commission as early as  
24 1976, is that right?

25 A That's certainly true, but that was a



1 long time ago. I hope you're not going to ask me  
2 to remember everything I said.

3 Q Well, just actually sometime in that  
4 period have you ever read the Warren Alquist Act?

5 A I believe in the '70s I did, yes.

6 Q I want to go back --

7 A You're not going to ask me to --

8 Q No, I'm not. I won't go back to the  
9 '70s.

10 MR. WHEATLAND: I thank you very much.  
11 That completes my cross-examination.

12 HEARING OFFICER WILLIAMS: Thank you,  
13 Mr. Wheatland. Staff.

14 MS. DeCARLO: I have just a few quick  
15 questions.

16 CROSS-EXAMINATION

17 BY MS. DeCARLO:

18 Q Are industrial uses defined in the  
19 Alameda County general plan?

20 A I don't believe they are, but I will, as  
21 you ask your next question I'll take a look.

22 Q Actually my next question follows from  
23 the first, so --

24 (Pause.)

25 MR. SCHNEIDER: I don't know that

1 industrial facilities, per se, is defined, but the  
2 industrial land use designation is described, yes.

3 BY MS. DeCARLO:

4 Q And are power plants included within  
5 that designation, specifically?

6 A They're not stated specifically, no.

7 Q Okay, thanks.

8 MS. DeCARLO: That's all that staff has.

9 HEARING OFFICER WILLIAMS: Mr. Sarvey,  
10 do you have any redirect?

11 MR. SARVEY: No, we're fine, thank you.

12 HEARING OFFICER WILLIAMS: Okay. Well,  
13 do you want to move your exhibits, Mr. Wheatland,  
14 in this area?

15 MR. WHEATLAND: Well, I'd like to move  
16 the resolution on Metcalf just for the limited  
17 purpose of showing that the Club has adopted that  
18 resolution, not for the truth of the matters that  
19 were asserted therein.

20 HEARING OFFICER WILLIAMS: Okay. Any  
21 objection? Okay, we'll accept it for that  
22 purpose, and that purpose only.

23 And, then we will admit 4B, 4B-1 and B-  
24 2.

25 Staff, did you already move your --

1 MS. DeCARLO: I don't recall doing so,  
2 no.

3 HEARING OFFICER WILLIAMS: Okay, do you  
4 want to do so at this time?

5 MS. DeCARLO: Yes, can we move in  
6 exhibit 1D.

7 HEARING OFFICER WILLIAMS: Yes, we'll  
8 move in the relevant portions of the FSA on land  
9 use. Those will be admitted into evidence.

10 MS. DeCARLO: And Mr. Martinelli's  
11 testimony, as well as we are sponsoring exhibit  
12 1K, the general plan, so if we could move those  
13 in?

14 HEARING OFFICER WILLIAMS: Yes. Those  
15 exhibits will also be moved into evidence.

16 MS. DeCARLO: Thank you.

17 HEARING OFFICER WILLIAMS: Yes, the Loma  
18 Prieta Chapter of the Sierra Club is applicant's  
19 4B-2.

20 Okay, and Mr. Sarvey.

21 MR. SARVEY: We'd like to move Mr.  
22 Schneider's testimony into the record, please.

23 HEARING OFFICER WILLIAMS: Any  
24 objection? Okay, Mr. Schneider's testimony is  
25 admitted.

1           And Mr. Sarvey's resolution 6C is also  
2           admitted for the limited purpose of establishing  
3           the Sierra Club Chapter's opposition to the East  
4           Altamont Energy Center.

5           Okay, I think with that we can now take  
6           public comment on the land use provision, if there  
7           is any public comment. Yes, Mrs. Sarvey.

8           MS. SARVEY: Hi, I'm Susan Sarvey. I'm  
9           a Tracy resident. I also have a local community  
10          group called CACKLE, Clean Air for Citizens and  
11          Legal Equality. Thank you.

12          I would ask you all today when you leave  
13          town to look back. Clean air will be missing.  
14          You will see what poor air quality looks like.  
15          Now imagine 1000 tons more of PM10, PM2.5 inside  
16          that basin.

17          I taught art today to 105 6th, 7th and  
18          8th graders who have itchy eyes, scratchy throats,  
19          runny noses and wheezing. But they tell me they  
20          don't think they're sick. They told me it is an  
21          allergy to the air today.

22          All of us know the asthma rate is over  
23          13 percent here now. I have kids tell me, I don't  
24          have asthma, I just can't breathe good sometimes.

25          Alameda County voters voted in measure D

1 to keep industry out of agricultural land areas.  
2 Calpine is not infrastructure. It is too big for  
3 just Alameda County, and there are companies that  
4 cannot even get a Department of Water Resources  
5 contract because the ISO is so crowded.

6 Before you say I'm anti-power, let me  
7 say how happy I am about the windmill contract  
8 that was just granted. Power without sacrificing  
9 my air quality and health.

10 My land use is being affected by my  
11 views of Mount Diablo being gone due to the  
12 placement of this plant. I have not heard any  
13 analysis of how my land use is being affected.

14 TriMark's reaction to the pictures of  
15 the plant and the plumes leads me to believe, now  
16 that they saw what they are really dealing with,  
17 they believe they could possibly have a marketing  
18 problem for their homes.

19 We have a serious lack of water here.  
20 Now for profit only, Byron Bethany is going to  
21 give away 7000 acrefeet of water a year. No one  
22 has addressed the drought issue. We have had  
23 rationing in Tracy several times during my 15  
24 years living here.

25 You are ruining my air, taking my water,

1 obstructing my views and over-burdening my  
2 emergency services. My fire chief stated clearly  
3 that he will not respond. Even you were appalled,  
4 Commissioner Pernell. We all know Alameda County  
5 cannot really respond in time. But you cannot  
6 expect my community to be there for you. We are  
7 unable to carry your burdens without compensation.

8           The Governor saved a bankrupt Calpine  
9 with this contract. They are unwilling to help my  
10 community, or even inform my community of their  
11 plans. How can you believe they will not just  
12 dump, dump, dump, take, take, take and leave us  
13 sick and dying.

14           You are violating the will of Alameda  
15 County voters and Tracy residents. The lawyers  
16 can argue, but the bottomline is people are going  
17 to get sick. We will have homes and farmers with  
18 not enough water. But we sure will have plenty of  
19 electricity for all the ventilators we'll need for  
20 the sick and the dying.

21           To hear these lawyers tell it, the  
22 courts are wrong. We have an energy crisis. But  
23 the judges say it was fraud to make money. Well,  
24 boys, remember, a judge is going to make the final  
25 call here, and he knows we have plenty of power.

1           And in terms of the earthquake you're  
2   discussing, what emergency plans do you have in  
3   place that will not require any of my community's  
4   input?

5           Thank you.

6           HEARING OFFICER WILLIAMS: Thank you,  
7   Mrs. Sarvey. Are there any more public comments  
8   on land use? Please come forward.

9           MS. BUENAVISTA: Hi, good afternoon.

10          HEARING OFFICER WILLIAMS: Good  
11   afternoon.

12          MS. BUENAVISTA: My name's Paula  
13   Buenavista; I'm a resident here in Tracy. And I'm  
14   also a member of CACKLE. And I will be brief.

15          I've listened to several individuals --

16          HEARING OFFICER WILLIAMS: Before you  
17   get started, do you think you could spell your  
18   name for the reporter?

19          MS. BUENAVISTA: Absolutely. It's  
20   B, as in boy, -u-e-n-a-v, as in Victor, -i-s-t-a,  
21   Buenavista.

22          HEARING OFFICER WILLIAMS: Thank you.

23          MS. BUENAVISTA: Sure. I've listened to  
24   several individuals who work for Calpine tell me  
25   that this is a good project. However, Calpine was

1 willing to leave the public noticing to the CEC  
2 instead of being a good neighbor and running a few  
3 ads in the local newspaper here in Tracy, being  
4 that we here in Tracy will receive the bulk of the  
5 pollution.

6 I don't understand why the CEC should be  
7 responsible for legal noticing for the applicant.  
8 The posting of the hearings and workshops on the  
9 CEC website should be considered a courtesy by the  
10 applicant.

11 A full-page ad in The Tracy Press would  
12 have cost the applicant \$2177. And that's a piece  
13 of information that I just looked into, myself.  
14 It doesn't seem like much compared to the  
15 approximate quarter of a billion per year that  
16 they will earn as a company.

17 I've yet to see anything from the  
18 applicant that leads me to see their willingness  
19 to be a good neighbor. I don't feel that the  
20 applicant has reached out to the community like it  
21 could be, or it could have done in order to get  
22 people here. And obviously the Commission  
23 hearings are during the day. It just seems more  
24 feasible. I understand that through the process  
25 that we went through with GWF.



1           The negotiated contract with the San  
2       Joaquin Valley Air Pollution Control District for  
3       \$1 million appears to be completely unacceptable  
4       in my viewpoint for 25,000 per year for a 40-year  
5       project. Not to mention the fact that the  
6       contract does not demand that the money be spent  
7       here in Tracy.

8           It would be great to see in a condition  
9       of mitigation for air quality that that money be  
10      demanded to at least be spent here, or mitigated a  
11      higher dollar amount for that particular piece of  
12      mitigation.

13          Our problems with air quality will never  
14      completely go away. The citizens of Tracy would  
15      like to be recognized for that. And I know that  
16      we talked -- or I heard a little speaking earlier  
17      when the gentleman for measure D was being  
18      questioned about particular resolution, and I  
19      didn't hear any air quality mentioned in the  
20      resolution.

21          I believe I heard mitigation on some  
22      other behalfts in the resolution, but I didn't hear  
23      anything, but I think you were speaking of the  
24      Metcalf project. And it just seems to me that air  
25      quality, land use are some really critical issues

1       that need to be looked at.  Water, as well, before  
2       we go ahead and okay a project of his magnitude.

3               Thank you.

4               COMMISSIONER PERNELL:  Thank you.

5               PRESIDING MEMBER KEESE:  Thank you.

6               HEARING OFFICER WILLIAMS:  Any further  
7       comment on land use?  Yes.

8               MS. MERCER:  My name is Gail Mercer,  
9       G-a-i-l M-e-r-c-e-r.  I'm with the Northern  
10      California Electrical Construction Industry.

11              There are many conflicts in  
12      environmental outcomes when you build a project or  
13      don't build a project, especially in this one.

14              If the East Altamont Energy Center is  
15      denied, as some people here would wish, then  
16      additional power plants, according to them, will  
17      have to be located in urban areas only, locating  
18      them next to where people live apparently is  
19      preferable to locating it near where it's proposed  
20      now.

21              The immediate negative environmental  
22      impact, if the East Altamont Energy Center is not  
23      built, would be the degradation of the water in  
24      the Delta, because the water that's generated by  
25      the Mountain House wastewater treatment facility

1 would have to be dumped back in there as opposed  
2 to being used for some other purpose.

3 So, if you build it or you don't build  
4 it, there are going to be environmental impacts.  
5 Building many small generating facilities could  
6 meet the needs of the area. However, trying to  
7 site many small generating facilities in an urban  
8 area would be extremely difficult and very very  
9 costly.

10 Locating generating facilities near the  
11 necessary gas, water, power distribution  
12 facilities, as this project is, is a necessity. I  
13 can't see how you could possibly think that you  
14 could locate these things in an urban area and  
15 support the infrastructure and all the wires and  
16 all the gas lines and everything else you would  
17 need to do that.

18 A lot of thought has gone into this  
19 project, as to the siting. And I understand that  
20 we need agricultural facilities. But the offset  
21 here, I think, it more than overwhelms that.

22 Thank you very much. I'm in favor of  
23 the facility siting where it is now.

24 HEARING OFFICER WILLIAMS: Thank you.

25 PRESIDING MEMBER KEESE: Thank you.

1           HEARING OFFICER WILLIAMS: Any more  
2 public comment at this time?

3           Okay, with that we will --

4           PRESIDING MEMBER KEESE: That will close  
5 out land use. And we're going to move on to air  
6 quality.

7           HEARING OFFICER WILLIAMS: Let's take  
8 about five minutes as we --

9           PRESIDING MEMBER KEESE: A brief five  
10 minutes.

11          HEARING OFFICER WILLIAMS: -- shift  
12 witnesses.

13          (Brief recess.)

14          PRESIDING MEMBER KEESE: The issue is  
15 public health -- I'm sorry, air quality. It would  
16 be real nice if we could polish this off before  
17 our dinner. I don't know exactly what time, we'll  
18 hear later, I guess, what time our dinner is.  
19 But, I'm looking at about four hours here  
20 beforehand, so let's see if we can do it in four  
21 hours, air quality.

22          If we beat that, everybody gets a gold  
23 star.

24          (Laughter.)

25          PRESIDING MEMBER KEESE: Okay. Major.

1 HEARING OFFICER WILLIAMS: Yes. We'll  
2 proceed with the applicant and its presentation on  
3 air quality and we'll swear the air quality  
4 witnesses.

5 Whereupon,

6 GARY RUBENSTEIN  
7 was called as a witness herein, and after first  
8 having been duly sworn, was examined and testified  
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. WHEATLAND:

12 Q Would you please state your name for the  
13 record?

14 A Yes, my name is Gary Rubenstein; last  
15 name is spelled R-u-b-e-n-s-t-e-i-n.

16 Q And do you have before you a copy of  
17 exhibits 4G-1 and 4G-2 which is the applicant's  
18 direct testimony on air quality and the errata to  
19 the applicant's testimony on air quality?

20 A Yes, I do.

21 Q And was this testimony set forth in  
22 exhibits 4G-1 and 4G-2 prepared by you or at your  
23 direction?

24 A Yes, they were.

25 Q And do these exhibits contain your

1 qualifications?

2 A Yes, they do.

3 Q Please summarize your qualifications,  
4 education and experience.

5 A I have a bachelor of science degree in  
6 engineering from the California Institute of  
7 Technology. I have 30 years of experience in the  
8 field of air pollution research and control. That  
9 included time spent with the California Air  
10 Resources Board.

11 When I left the Air Resources Board in  
12 1981 I was the Deputy Executive Officer for  
13 Technical Programs.

14 Since that time I have been a senior  
15 partner with the firm of Sierra Research, an air  
16 quality consulting firm based in Sacramento.

17 During my experience both with the Air  
18 Resources Board and with Sierra Research, I have  
19 testified in over 30 different power plant  
20 licensing proceedings before the California Energy  
21 Commission.

22 Q Do you have any additions, corrections  
23 or clarifications to your testimony today?

24 A There is one additional document that  
25 was not included in the list attached to my

1 testimony because it was, in fact, adopted after  
2 my testimony was filed, I believe. And that is  
3 the signed copy of the mitigation agreement  
4 between East Altamont Energy Center and the San  
5 Joaquin Valley Air Pollution Control District.

6 What was listed was a copy that was  
7 identical in substance, but it did not have the  
8 signatures of the San Joaquin District governing  
9 board. I'm having copies prepared of the signed  
10 version right now so that it can be introduced  
11 today, as well.

12 MR. WHEATLAND: So when we have copies  
13 available we'll ask that it be marked for  
14 identification.

15 HEARING OFFICER WILLIAMS: Well, I don't  
16 think there's a need to mark it for  
17 identification. It's the same version except it's  
18 a signed one, right?

19 MR. RUBENSTEIN: That's correct.

20 HEARING OFFICER WILLIAMS: So we'll just  
21 admit it as the signed version.

22 MR. WHEATLAND: Thank you.

23 BY MR. WHEATLAND:

24 Q Is the testimony that you're sponsoring  
25 here today, and the facts contained therein true

1 to the best of your knowledge?

2 A Yes, it is, they are.

3 Q And do the opinions expressed in your  
4 testimony represent your best professional  
5 judgment?

6 A Yes, they do.

7 Q And do you adopt these exhibits as your  
8 testimony in this proceeding?

9 A Yes, I do.

10 Q All right, now I'm going to ask you a  
11 couple questions to summarize your direct  
12 testimony and then I'm also going to ask you to  
13 briefly summarize how your testimony relates to  
14 the testimony of other witnesses on air quality  
15 that will be received here today.

16 To begin, would you please summarize  
17 your direct testimony.

18 A Yes. I reviewed the air quality impacts  
19 of the East Altamont Energy Center from two  
20 different perspectives. First was compliance with  
21 applicable regulations, and then second was the  
22 potential for significant impacts under the  
23 California Environmental Quality Act.

24 First, with respect to regulatory  
25 compliance there are three principal issues that



1 have to be addressed. The first is best available  
2 control technology. With the conditions included  
3 in the final determination of compliance issued by  
4 the Bay Area Air Quality Management District, I  
5 believe that the project does, in fact, satisfy  
6 the BACT requirements of that District. And that  
7 there are no remaining issues with respect to  
8 regulatory compliance for BACT.

9 The second aspect to regulatory  
10 compliance is an air quality impact analysis.  
11 That analysis was included in the application for  
12 certification and was subsequently amended in  
13 November of 2001 to reflect changes to the project  
14 design, including a substantial reduction in  
15 project emission rates.

16 I believe that the District's final  
17 determination of compliance shows that the air  
18 quality impact analysis satisfies all of the  
19 BAAQMD regulatory requirements, as well.

20 The third aspect of regulatory  
21 compliance has to do with the provision of  
22 emissions offsets. I'll discuss these more a  
23 little bit later, but in short, the project has  
24 provided to the Air District, or has identified,  
25 rather, sufficient emission reduction credits that

1 will be surrendered to satisfy the Bay Area  
2 District's regulatory requirements for offsets.

3 With respect to the California  
4 Environmental Quality Act our analysis looked at  
5 both localized project impacts and regional  
6 project impacts. And I believe that a full  
7 understanding of both of those is important to  
8 understand how different aspects of our analysis  
9 relate to each one.

10 There are four main aspects to an  
11 evaluation of localized impacts of a project.  
12 First is insuring that a project uses the best  
13 controls available. That is essentially insuring  
14 that the project satisfies the best available  
15 control technology requirements of the District.  
16 And as I said earlier, I believe that this project  
17 does that.

18 It includes the use of dry low-NOx  
19 combustors on the gas turbines; selective  
20 catalytic reduction and oxidation catalysts for  
21 yet additional controls, as well as advanced  
22 controls on the various items of auxiliary  
23 equipment that are proposed for the project.

24 With respect to localized impacts,  
25 another aspect of the analysis has to do with the

1 air quality impact analysis. The project has to  
2 demonstrate that it will not cause a violation of  
3 any state or federal air quality standards under  
4 any operating conditions, under any weather  
5 conditions.

6 And the analyses that have been  
7 submitted to the Commission and to the Air  
8 Districts, I believe make that demonstration quite  
9 convincingly. In fact, the project's impacts are  
10 all below the applicable regulatory significance  
11 levels.

12 With respect to -- the third aspect,  
13 rather, of localized impacts analysis has to do  
14 with the screening level health risk assessment.  
15 And although this is more fully discussed in the  
16 public health section, the screening level health  
17 risk assessment is intended to assure that a  
18 project, once again, will not cause unhealthy  
19 levels of any toxic air pollutants, or an  
20 unacceptable risk at any location, under any  
21 operating circumstances, and under any weather  
22 conditions. The analyses that was submitted in  
23 the AFC make that showing quite convincingly,  
24 again.

25 In short, with those three analyses, the

1 best available control technology, the air quality  
2 impact analysis and the screening level health  
3 risk assessment, I believe that we've demonstrated  
4 that the project will not result in any  
5 significant localized air quality or public health  
6 impacts.

7 Now, it's important when I say that to  
8 be cognizant of the fact that I've not discussed  
9 emissions offsets at all. Because emissions  
10 offsets are not part, at least in my opinion, of a  
11 localized impacts analysis. You have to make sure  
12 that a project is safe without regard to emissions  
13 offsets. And I believe we've done that.

14 There are several aspects of a regional  
15 impacts analysis, which is the second prong of an  
16 overall air quality analysis for CEQA.

17 In terms of regional impacts we still  
18 have to make sure that we're using the cleanest  
19 control technologies available, and we have done  
20 that again through the use of best available  
21 control technology.

22 The air quality impact analysis here is  
23 a little bit different than that, not only do we  
24 have to show that the project will not cause any  
25 violations in the air quality standards locally,

1 but we also have to look at whether the project  
2 will result in potentially significant cumulative  
3 air quality impacts.

4 There is an analysis of cumulative  
5 impacts that was included in the AFC. That  
6 analysis was revised in November of 2001. That  
7 analysis showed that the project does have the  
8 potential to contribute to existing violations of  
9 the state and federal standards for ozone and  
10 PM10, thus creating the possibility of a  
11 significant cumulative impact.

12 That is not the only cumulative impacts  
13 analysis that was done for the project, however.  
14 In addition, the AFC contained a protocol for a  
15 more detailed cumulative impacts analysis taking  
16 into account other sources that were proposed for  
17 the area.

18 In correspondence with the Bay Area and  
19 San Joaquin Air Districts, which were provided to  
20 the Commission and are included in my testimony as  
21 references, we confirmed with those Districts that  
22 there were no other industrial facilities proposed  
23 that met the criterion and protocol, and hence  
24 would need to be included in a cumulative impacts  
25 analysis. So that's the second element of

1 cumulative impacts that we addressed.

2 Third, as you may recall, there was a  
3 discussion earlier this year as to whether,  
4 because of the later filings by the applicants for  
5 the Tesla and Tracy Peaker project, whether a  
6 third, or another cumulative impacts analysis  
7 needed to be done that took a look at all of the  
8 power plant impacts.

9 And in this Committee's ruling in  
10 January of this year, the Committee held that the  
11 cumulative impacts analysis that was provided for  
12 the Tesla project in fact satisfied that  
13 objective. And so that's a third cumulative  
14 impacts analysis that was done.

15 And then finally, referenced in my  
16 testimony, is a cumulative impacts analysis that  
17 was performed for the Tracy Peaker project that  
18 included all three power projects, as well as  
19 several development projects.

20 In short, there have been several  
21 cumulative impact analyses that have been done  
22 looking at not just East Altamont, but East  
23 Altamont in combination with a number of other  
24 sources. And all of those analyses reached the  
25 same conclusion.

1           The conclusion is that East Altamont  
2     will not, by itself, cause any violations of any  
3     of the state or federal or air quality standards.  
4     And that East Altamont will contribute to existing  
5     violations of state and federal standards for  
6     ozone and PM10.

7           That then brings us to the question of  
8     emissions offsets. The emissions offsets, as I  
9     said earlier, are not intended to address  
10    localized air quality impacts, but rather they're  
11    intended to deal with regional air pollution  
12    problems.

13           If you imagine, if you will, a bowl of  
14    water simulating the carrying capacity in terms of  
15    how much air pollution you can have within a  
16    valley or within an air basin. And there's a  
17    certain line above which, if there's too much  
18    water, you're going to have exceedances of an air  
19    quality standard.

20           The purpose of the emission offset  
21    program is to make sure that a project developer  
22    scoops out more water than they will add in with  
23    their project, so that even as additional  
24    development occurs, the overall level in the bowl  
25    continues to go down.

1           And the emissions offset program, in my  
2           opinion, has been quite successful throughout  
3           California, and particular in the Bay Area and San  
4           Joaquin Districts in achieving that objective.

5           The emission reductions that were  
6           provided through that program for this project in  
7           the Bay Area, quite clearly, in my mind, satisfied  
8           the requirement to demonstrate that we had  
9           mitigated our contribution to a significant or  
10          potentially significant cumulative impact.

11          However, early on in this proceeding the  
12          San Joaquin Valley Air District expressed a  
13          different opinion. And they expressed the concern  
14          that the mitigation we were providing in the form  
15          of offsets to the Bay Area District would not be  
16          sufficient to address the air quality impacts, the  
17          cumulative regional impacts within the San Joaquin  
18          Valley.

19          And as a result of guidance that we  
20          received from this Committee, direction we  
21          received from the staff, and quite diligent  
22          efforts on the part of the San Joaquin District to  
23          make sure that their concerns were addressed, we  
24          did, in fact, sign and enter into a mitigation  
25          agreement with the San Joaquin District that



1 provides funding for some fairly specific emission  
2 reduction programs, targeted towards the northern  
3 end of the San Joaquin Valley.

4 That mitigation agreement included a  
5 calculation of what quantity of emission offsets  
6 the San Joaquin District would have required had  
7 this project been within their jurisdiction. Took  
8 that number, multiplied it by two, as an  
9 additional safety margin. And then provided for  
10 funding of emission reduction programs to be  
11 implemented by the San Joaquin District to insure  
12 that those reductions were, in fact, achieved.

13 It's my opinion that based on all of the  
14 analyses I've discussed, that the East Altamont  
15 Energy Center will not result in any significant  
16 localized air quality impacts. And with the  
17 application of mitigation measures I've just  
18 discussed, will not result in any significant  
19 cumulative air quality impacts, either in the Bay  
20 Area or in the San Joaquin Valley.

21 That completes the summary of my  
22 testimony.

23 Q Thank you. Next, would you please  
24 review and comment on the CEC Staff testimony as  
25 it relates to the applicant's direct testimony?

1           A     The CEC Staff's testimony disagrees with  
2     mine in five principal areas.  Those areas relate  
3     to emission rates from the gas turbines during  
4     plant startups; emission limits for ammonia slip;  
5     the significance of construction impacts and what  
6     mitigation would be required; mitigation of  
7     impacts related to sulfur dioxide emissions; and  
8     the overall issue of cumulative impacts and  
9     mitigation for the project.

10           Let me briefly go through each of those.  
11     With respect to emission rates during startups,  
12     the staff has estimated emission rates from the  
13     turbines proposed to be used for this project to  
14     be higher than those that we have estimated.  And  
15     it's principally that difference that results in  
16     the FSA showing emission rates for the plant that  
17     are higher than those included in either the AFC  
18     or higher than those included in the final  
19     determination of compliance issued by the Bay Area  
20     District.

21           The staff has claimed that the data that  
22     we've submitted, which is data that has been  
23     confirmed from source tests at existing plants,  
24     are not relevant because of differences between  
25     the General Electric 7FE model turbines from which

1 the data were derived, and the General Electric  
2 model 7FB turbines that are proposed for this  
3 project.

4 The staff has, in my opinion, provided  
5 no support for their claim of significant  
6 differences. We have provided information to the  
7 staff, as referenced in my testimony, showing that  
8 the 7FB turbine is simply an evolutionary change  
9 as compared with the 7FA, and that there are no  
10 data to suggest that startup emissions performance  
11 will be any different between the two turbines.

12 And to the best of my knowledge there is  
13 no data in the record to indicate that startup  
14 emissions performance will be any different for  
15 the two turbines.

16 Both the Bay Area District's final  
17 determination of compliance and the staff's  
18 proposes conditions of certification limit startup  
19 emissions to those that we proposed.  
20 Consequently, I don't believe there is an issue.  
21 There should be no issue. We have proposed to  
22 meet certain emission limits. We believe we have  
23 sound engineering basis for proposing those.

24 The Commission's conditions will require  
25 us to meet those limits. The Bay Area District's

1 conditions require us to meet those limits. So  
2 this should not be an issue.

3 The second topic area has to do with  
4 ammonia slip limits. On this issue the staff has  
5 proposed an ammonia slip limit of 5 ppm, while we  
6 have proposed an ammonia slip limit of 10 ppm.  
7 Both the Bay Area Air Quality District and the San  
8 Joaquin Valley Air District have confirmed that a  
9 10 ppm ammonia slip limit is appropriate for this  
10 project in this area, given that this region is,  
11 in general, ammonia rich.

12 What it means for a region to be ammonia  
13 rich is that the addition of additional emissions  
14 of ammonia will not contribute significantly to  
15 additional particulate formation because there is  
16 already plenty of ammonia there.

17 And both agencies have made the value  
18 judgment that due to their desire to continue  
19 focusing on further NOx reductions, and this plant  
20 is now required to meet a 2 ppm NOx level, one of  
21 the first coming before the Commission to do that,  
22 that it is prudent to keep the pressure on NOx  
23 emissions, lower that limit as much as possible,  
24 and not put as much focus on ammonia slip.

25 You might find different parts of the

1 state, different districts may render different  
2 opinions because not all parts of the state are  
3 ammonia rich. Southern California is an excellent  
4 example where you might see in some cases ammonia  
5 slip levels that are proposed much lower levels  
6 because of meteorological conditions certain times  
7 of the year.

8 But in this region there's absolutely no  
9 dispute between any of the agencies that the  
10 region is ammonia rich, and there is no benefit,  
11 no air quality benefit for lower slip levels.

12 In addition, I'd only note that the  
13 Commission, itself, approved a 10 ppm slip level  
14 for the Tracy Peaker project. And has approved a  
15 10 ppm slip level for numerous other projects in  
16 both the Bay Area and San Joaquin Valley.

17 Finally, there is, in my opinion, no  
18 evidence in the record to support the staff's  
19 claim for the lower slip limit.

20 The third area of disagreement between  
21 the staff's testimony and mine has to do with  
22 construction impacts and particular mitigation  
23 conditions. As I believe the Committee's well  
24 aware, mitigation conditions for construction in  
25 the air quality area have evolved significantly

1 over the last couple of years.

2 This issue was discussed in detail in my  
3 testimony, and I don't see any need to put  
4 everybody to sleep going over it again. But, in  
5 short, there are substantial differences. And we  
6 provided a detailed response, including detailed  
7 proposed changes to the staff's conditions. And I  
8 don't believe that the staff, again in this case,  
9 has justified the need for the additional  
10 mitigation requiring here, as compared with, for  
11 example, the Russell City project, which was  
12 approved by the Commission not very long ago.

13 The fourth topic area has to do with  
14 mitigation of sulfur dioxide impacts. In this  
15 case the staff argues that mitigation should be  
16 provided for SO2 emissions. The dispute arises  
17 because the SO2 emission from the project are  
18 sufficiently low that they do not trigger emission  
19 offset requirements within the Bay Area Air  
20 District.

21 The staff's position, in my opinion, has  
22 been inconsistently applied in different siting  
23 cases. And in data responses 26 and 27 which are  
24 referenced in my testimony, you'll find a  
25 description of different cases in which SO2

1 mitigation sometimes has been required, sometimes  
2 hasn't.

3 i don't believe that there's been any  
4 demonstration made in this case that additional  
5 mitigation was required. However, if it is  
6 required, then if you were to evaluate this  
7 project's mitigation in exactly the same manner as  
8 has been done for many other cases, most recently  
9 the Tracy Peaker project, you'll find that the  
10 offsets we've provided are sufficient to show that  
11 we mitigated our SO2 impacts, even if you reach  
12 the conclusion that mitigation is required.

13 And in particular I would refer you to  
14 table 1 in my testimony which shows the  
15 calculation as compared wit the calculation that  
16 was performed for the Tracy Peaker project.

17 The fifth and final area of disagreement  
18 with the staff has to do with the question of  
19 cumulative impacts and mitigation. In particular,  
20 staff is taking the position that in addition to  
21 the provision of full emission offsets as required  
22 by the Bay Area District, and in addition to the  
23 mitigation agreement that the project is signed  
24 with the San Joaquin Valley Air District, that yet  
25 further mitigation of emissions impacts is

1 required.

2 And their position both has to do with  
3 the quantity of mitigation that's being offered,  
4 as well as their assurance that the mitigation  
5 will be carried out.

6 Staff's additional concerns, as  
7 expressed to us nearly a year ago, were that  
8 because the project was located within the San  
9 Joaquin Valley air basin physically, but was  
10 within the jurisdiction of the Bay Area Air  
11 Quality Management District, there were concerns  
12 that offsets we provided to address the Bay Area  
13 District's regulatory requirements would not  
14 provide real benefits within the San Joaquin  
15 Valley air basin.

16 We have worked diligently with the San  
17 Joaquin Valley Air District over the last year to  
18 specifically address that concern. And we believe  
19 that with the mitigation agreement that has been  
20 signed with the San Joaquin Valley District, we  
21 have, in fact, addressed that concern.

22 However, the staff's concern has now  
23 changed. Now they disagree with the San Joaquin  
24 Valley Air District regarding how much additional  
25 mitigation is required. And they also disagree



1 with the San Joaquin Valley District's  
2 characterization of their ability to manage the  
3 mitigation program and provide sufficient  
4 reductions.

5 And finally, the staff now has indicated  
6 a need for what I refer to as micro-scale  
7 mitigation of localized impacts. And as I said  
8 earlier, I don't believe there's anything in the  
9 record to support the claim that there are, in  
10 fact, localized air quality impacts associated  
11 with the project.

12 With respect to the extent of mitigation  
13 I believe the staff has mischaracterized the Air  
14 District's requirements. In the FSA, it's air  
15 quality table 10, and that table purports to show  
16 the East Altamont project emissions in the context  
17 of the San Joaquin Valley regulatory requirements.

18 And it provides a rationale for  
19 explaining why the District believes the quantity  
20 of mitigation they're seeking is, in fact,  
21 necessary.

22 However, that table 10 includes a 27  
23 percent transport ratio which is not in the San  
24 Joaquin District regs. It is rather a reflection  
25 of the staff's opinion. And it's not required

1 under the San Joaquin District rules.

2 There is a correct demonstration of what  
3 the project's requirements would be under the San  
4 Joaquin District's rules that is attached as a  
5 table to the mitigation agreement that's been  
6 signed by the San Joaquin District. And that  
7 table is there because that was, in fact, the  
8 basis for calculating what the mitigation fee  
9 would be.

10 The mitigation fee was based on an  
11 assessment of what the project would have been  
12 subject to in terms of offset requirements had it  
13 been located in the San Joaquin Valley.

14 I would urge you to compare those two  
15 tables, air quality table 10 and the table that's  
16 in mitigation agreement, and as I said earlier,  
17 the mitigation agreement has been signed by the  
18 governing board of the District. It is, I think,  
19 the only correct characterization of what the  
20 project's requirements require.

21 Consequently I think that much less  
22 additional mitigation is required for the project  
23 as compared to what the staff is asserting.

24 With respect to the ability of the Air  
25 District to manage the mitigation funds, I'd

1 simply point out that the Air District is, in  
2 fact, in the business of controlling emissions.  
3 That's what they do. They have a demonstrated  
4 track record for implementing programs of this  
5 type with sources of the type that we expect to be  
6 controlled. And I don't believe the staff does.

7 Consequently, I think that is a false issue,  
8 as well.

9 And then finally, with respect to the  
10 need for what I refer to as microscale mitigation,  
11 I believe that our air quality impact analysis, as  
12 well as the analysis performed by the Bay Area  
13 District, and the mitigation agreement approved by  
14 the San Joaquin District Governing Board, all  
15 confirm that there are no significant localized  
16 air quality impacts. And that mitigation needs to  
17 be directed towards programs of regional benefit.  
18 And that's what the mitigation program does.

19 IN summary, on the staff's testimony  
20 it's my recommendation that the Committee adopt  
21 our proposed mitigation condition of  
22 certification. There are actually two conditions  
23 that are proposed. One is contained in my  
24 testimony, which is the one that would serve to  
25 enforce the mitigation agreement entered into with

1 the San Joaquin District.

2 And then there's a second condition that  
3 I'm recommending that's contained in the October  
4 11th errata, which would formalize public  
5 participation process in the review of mitigation  
6 measures that the San Joaquin District would  
7 consider.

8 And would recommend that you adopt those  
9 two conditions in lieu of conditions AQSC-5 and  
10 AQSC-6.

11 BY MR. WHEATLAND:

12 Q Now, Mr. Sarvey has also submitted to  
13 this proceeding materials relating to air quality  
14 in a prehearing conference statement and  
15 testimony. Could you please comment on Mr.  
16 Sarvey's materials as they relate to your direct  
17 testimony?

18 A Actually, I see that I've not actually  
19 finished discussing the staff's errata --

20 Q Oh, I'm sorry.

21 A -- which was filed --

22 Q Go ahead, please finish your response to  
23 that, please.

24 A The staff filed an errata on air quality  
25 issues which addressed three topic areas,

1 cumulative impacts, construction mitigation and  
2 the need for additional mitigation.

3 With respect to cumulative impacts the  
4 staff provided a cumulative impacts analysis that  
5 purports to show the combined impacts of several  
6 power projects, existing facilities and three  
7 housing development projects.

8 However, the errata did not contain any  
9 backup information, no modeling files have been  
10 made available, no emission calculations have been  
11 made available. There is no supporting  
12 information. Consequently, it's impossible for me  
13 to comment on the accuracy of the staff's  
14 analysis.

15 I would note, however, that the staff's  
16 analysis only addressed PM10 impacts. But yet the  
17 staff claimed that their analysis supports their  
18 conclusion that additional mitigation is required  
19 for ozone precursors. And I'd note that the bulk  
20 of the additional mitigation they're requiring is  
21 related to ozone precursors and not PM10.

22 There is no evidence in the record, in  
23 my opinion, to support the staff's position except  
24 for the conclusory statements that are contained  
25 in the errata without supporting backup

1 information. But even if the numbers in the  
2 errata are true, the errata doesn't support the  
3 staff's claim to quantity of mitigation that's  
4 required for the project.

5 The second topic area that's discussed  
6 in the errata deals with construction mitigation.  
7 And although the condition moves in the right  
8 direction, it's not just a simplification as the  
9 staff has asserted.

10 In particular it still implies that  
11 there needs to be a separate mitigation manager  
12 dedicated just to fugitive dust, which is an issue  
13 that we thought the Commission had dealt with in  
14 the Russell City case.

15 In addition, the simplification, so to  
16 speak, goes beyond previous staff positions in  
17 that it mandates the use of soot filters for all  
18 diesel engines over 100 horsepower in size;  
19 whereas previous conditions approved by the  
20 Commission only require the use of soot filters on  
21 large engines if they're not certified to meet  
22 1996 or later standards. That's a significant  
23 distinction.

24 In addition, the staff's condition  
25 includes several proscriptive requirements, things

1       like shutting down the construction when wind  
2       speeds exceed 15 miles per hour, and mandated  
3       frequencies for watering that are totally at odds  
4       with the concept of setting up a series of  
5       performance objectives in terms of making sure  
6       dust levels don't exceed specified quantified  
7       levels. And then insuring there is someone who is  
8       a trained visible emissions reader on site to  
9       insure that mitigation measures are properly  
10      carried out to achieve those objectives.

11               The staff's language in the errata  
12      basically undoes what they were trying to  
13      accomplish and what we were trying to accomplish  
14      in the previous version.

15               Consequently, I continue to recommend  
16      the conditions that are as written as modified in  
17      my testimony. That's a detailed markup of what  
18      the staff's original proposal was.

19               Finally, with respect to the need for  
20      additional mitigation, in the errata the staff has  
21      not revised the quantity of mitigation they're  
22      seeking. All they do is suggest that East  
23      Altamont will obtain some unspecified degree of  
24      credit for reductions that are achieved under the  
25      mitigation agreement with the San Joaquin

1 District. And based on that, I continue to  
2 recommend, as I did earlier, the two mitigation  
3 conditions that I proposed in lieu of AQSC-5 and  
4 AQSC-6.

5 And that does complete my review of the  
6 staff's testimony and errata.

7 Q I apologize for forgetting the errata.  
8 So if we could turn now then to Mr. Sarvey's  
9 materials, please.

10 A I reviewed Mr. Sarvey's prehearing  
11 conference statement, as well as the testimony of  
12 Erik Parfrey, that was included in that package.

13 In the prehearing conference statement  
14 there were a number of comments that were made  
15 regarding cumulative impacts analysis. I believe  
16 I've already addressed those today, as well as in  
17 my testimony. I won't go through those again.

18 There's a question that was raised  
19 regarding the adequacy of the SO2 emission  
20 credits. Those credits were approved by the Bay  
21 Area District with a fairly high discount ratio of  
22 three to one. And I believe that that issue has  
23 also been addressed in the final determination of  
24 compliance, as well as in my testimony.

25 With respect to the location of the



1 emission reduction credits, that's addressed in my  
2 written testimony. I've discussed it earlier  
3 today. Emission reduction credits are part of a  
4 regional mitigation program, not localized. And  
5 that issue was also addressed in the mitigation  
6 agreement with the San Joaquin Valley Air  
7 District.

8 All of the other issues that are  
9 identified in Mr. Sarvey's prehearing conference  
10 statement I've reviewed, and they're all either  
11 addressed in my written testimony or in  
12 discussions I've already given today.

13 With respect to the testimony of Mr.  
14 Parfrey, again he raised issues about cumulative  
15 impacts that I've already touched on today. He  
16 indicated that air quality impacts to Mountain  
17 House residents were ignored. That's simply not  
18 correct. The air quality impact analysis  
19 presented in the AFC in the November 2001 filing  
20 and discussed in the final staff assessment look  
21 at the maximum air quality impacts at any  
22 location. The receptor grid that we used extends  
23 to 16 kilometer distance in all directions. And  
24 the maximum impacts were identified, and all of  
25 those are below significance levels.

1           Mr. Parfrey also questions the adequacy  
2     of the mitigation that's being proposed. I  
3     believe that the San Joaquin mitigation agreement  
4     we've executed with the San Joaquin District  
5     clearly identifies the measures from which the  
6     actual mitigation will be developed. The  
7     agreement, in fact, refers to the consensus  
8     mitigation plan that was submitted to the  
9     Commission back in July.

10           And we have proposed additional  
11    conditions of the errata to my testimony which  
12    would insure the involvement of residents from the  
13    community in the review process.

14           Lastly, with respect to a comment that  
15    Mr. Parfrey made, I believe it was in the visual  
16    area, but it was hard to tell. Let me just make  
17    it very clear for the record, there are no smoke  
18    plumes associated with this project.

19           There's several references to that in  
20    his testimony. There are no smoke plumes from the  
21    project. There's no evidence in the record to  
22    suggest that there will be. I suspect he was  
23    talking about the visible water vapor plumes, but  
24    I just wanted to be crystal clear, there's no  
25    smoke coming from this plant.

1           And that concludes my comments on Mr.  
2       Sarvey's filings.

3           Q     Next, would you please review and  
4       comment upon the materials that have been  
5       submitted by CARE in this proceeding.

6           A     Yes. In their prehearing conference  
7       statements, CARE discussed issues related to a  
8       cumulative impacts analysis that I've already  
9       addressed today.

10          In addition, in the direct testimony  
11       that was sponsored by CARE there were several  
12       issues that were identified. First had to do with  
13       SCONOX. It's an issue that the Commission has  
14       heard many times. The issue about the need for  
15       performance of and availability of SCONOX to  
16       control the emissions from this plant was  
17       addressed in the application for certification, in  
18       the preliminary determination of compliance issued  
19       by the Bay Area District, and in their final  
20       determination of compliance.

21          And, in my opinion, going through the  
22       record there is no contrary evidence to those  
23       conclusions presented in CARE's testimony at all.  
24       And I believe the conclusions in the FDOC still  
25       remain valid.

1           Second issue raised in CARE's sponsored  
2       testimony has to do with whether the attainment  
3       status of the Bay Area Air Quality District  
4       somehow renders some of emission reduction credits  
5       invalid because they are too old.

6           There's absolutely nothing in either the  
7       Bay Area District or EPA regulations that creates  
8       that kind of connection. There's certainly  
9       nothing in the record to support their assertion.  
10      And I believe, based on my review of the Bay Area  
11      District's regulations, as well as based on the  
12      information contained in the FDOC, that there's  
13      absolutely no question but that all of the ERCs  
14      are valid.

15           Also included in CARE's direct testimony  
16      is a copy of the comments they submitted to the  
17      Bay Area District regarding the preliminary  
18      determination of compliance. I believe that those  
19      issues are already addressed by the Bay Area  
20      District in the final determination of compliance.

21           Although it's in the subject area of  
22      biological resources in CARE's testimony, there  
23      was a discussion in there regarding whether East  
24      Altamont's emissions are, quote, "unusually great"  
25      unquote, as compared with other projects approved

1 by the Commission.

2 I don't believe there's any support for  
3 that claim. In fact, when I reviewed the charts  
4 that are contained in CARE's testimony, I believe  
5 they show exactly the opposite. That the emission  
6 levels proposed for East Altamont, which are going  
7 to be enforced by conditions both by this  
8 Commission and by the Bay Area District, are one  
9 of the lowest for all of the criteria pollutants  
10 for projects that have been approved by the Energy  
11 Commission. So I think that statement is simply  
12 false.

13 And that concludes my comments on CARE's  
14 testimony and filings.

15 Q Finally, before we have cross-  
16 examination, do you have a final summary and  
17 conclusion?

18 A Yes. Based on the analyses that I  
19 performed for this project, I believe that there  
20 are no significant localized air quality or public  
21 health impacts associated with the operation of  
22 East Altamont Energy Center.

23 I also believe, based on my analysis,  
24 that there were no significant regional air  
25 quality or public health impacts that remain after

1 the application of mitigation through the  
2 provision of emission reduction credits to the Bay  
3 Area District, and implementation of the  
4 mitigation agreement signed with the San Joaquin  
5 Valley Air District.

6 I believe that the project has  
7 demonstrated compliance with all applicable laws,  
8 ordinances, regulations and standards. And I do  
9 object, as I stated earlier, to the additional  
10 proposed conditions that the staff has proposed  
11 regarding ammonia slip; with respect to the  
12 additional mitigation requirements, as I've said,  
13 we recommend the two conditions that we have  
14 proposed in lieu of the two conditions that the  
15 staff has proposed.

16 And with respect to mitigation of  
17 construction impacts, recommend the conditions  
18 that are identified in my testimony in lieu of the  
19 conditions that the staff has proposed.

20 And that completes my testimony.

21 Q Thank you.

22 MR. WHEATLAND: The witness is available  
23 for cross-examination.

24 HEARING OFFICER WILLIAMS: Thank you,  
25 Mr. Wheatland. Staff.

1 MS. DeCARLO: Thank you.

2 CROSS-EXAMINATION

3 BY MS. DeCARLO:

4 Q On pages 2.1-4 and several other pages  
5 of your testimony, Mr. Rubenstein, you state that  
6 the project satisfies all state and federal air  
7 quality requirements which was confirmed by  
8 extensive reviews by both BAAQMD and the San  
9 Joaquin Valley Unified Air Pollution Control  
10 District.

11 Can you please describe the extensive  
12 review performed by San Joaquin District?

13 HEARING OFFICER WILLIAMS: By the way,  
14 where is San Joaquin?

15 MR. SWANEY: Would you like me to come  
16 to the table?

17 HEARING OFFICER WILLIAMS: Sure, why  
18 don't you come up to the table.

19 MR. RUBENSTEIN: I would say that  
20 probably the question is better put to them. But  
21 my understanding of the extensive nature of their  
22 review is that they reviewed information contained  
23 in the application for certification. Compared  
24 best available control technology levels that we  
25 were proposing with those that they have imposed

1 on similar projects within their jurisdiction.

2 They evaluated the emission reduction  
3 credits that we proposed, both to evaluate whether  
4 those credits would satisfy Bay Area District  
5 requirements, as well as evaluated how those  
6 credits would be applied if the project was  
7 located within their jurisdiction.

8 And they also took a look at the air  
9 quality impact analysis. My recollection is that  
10 the San Joaquin Air District filed initial  
11 comments with the Commission in the fall of last  
12 year. They also filed written comments on the  
13 preliminary determination of compliance issued by  
14 the Bay Area District. Both of those suggested to  
15 me that they had done more than a casual review of  
16 this project's impacts.

17 And then, as I said earlier, after  
18 issuance of the final determination of compliance,  
19 we negotiated a mitigation agreement with them.  
20 And based on the mitigation agreement, the San  
21 Joaquin District has confirmed that they believe  
22 that all of our impacts have been mitigated to a  
23 less than significance level.

24 BY MS. DeCARLO:

25 Q And other than the air quality



1 settlement agreement, is their analysis located in  
2 any other document?

3 A You mean other than the comment letters  
4 that I also referred to?

5 Q Correct. Those, as well.

6 A I don't know if they have any internal  
7 documents. The only public documents I've seen  
8 are those they've submitted to the Commission, to  
9 the Bay Area District and the mitigation  
10 agreement.

11 Q Were any permits issued by San Joaquin  
12 Air District?

13 A For this project?

14 Q Yes.

15 A No.

16 Q Were the District's review efforts  
17 reviewed by any oversight agency such as CARB or  
18 USEPA?

19 A I'm sorry, which District?

20 Q San Joaquin.

21 A I have no idea.

22 Q On page 2.1-5 you state that measures  
23 indicate a slight positive trend in PM10 levels in  
24 the project area. How were the PM10 levels in  
25 Tracy measured?

1           A     I'm sorry, I'm not understanding the  
2     question.  Do you mean what type of monitor was  
3     used?

4           Q     Is there any monitoring station to  
5     collect PM10 levels in Tracy?

6           A     At the time we prepared the analysis in  
7     the AFC, no.

8           Q     Given the limited improvement in average  
9     peak PM10 levels from 1994 to 2001, of 119 to 100  
10    mcg/cubic meter, when would you expect the area to  
11    achieve the health-based ambient air quality  
12    standard of 50 mcg/cubic meter?

13          A     Actually that's a fairly complicated  
14    question to answer.  If I can refer you to the  
15    AFC, to figure 8.1-12, to the 8.1-13 which is on  
16    page 8.1-70, you'll see that there was a period in  
17    the early 1990s when there was a fairly sharp drop  
18    in maximum 24-hour PM10 concentrations in  
19    Livermore, which has been followed by a period of  
20    not a very significant change or a slight drop  
21    since then.

22                If you turn to the next page you take a  
23    look at figure 8.1-14, which shows the expected  
24    number of violation days, once again you see a  
25    rather dramatic drop in the number of violation

1 days from over 125 in 1990 down to less than 25 in  
2 1996. Followed by an increase in number of  
3 violation days for the last several years.

4 So if someone could understand, and I'm  
5 not prepared to say I understand it today, but if  
6 someone could understand exactly what happened  
7 during the early 1990s, and duplicate that, then  
8 it's quite possible that you could have attainment  
9 of the 50 mcg standard fairly quickly.

10 However, given the fact that a 50 mcg  
11 standard is a state standard, which is exceeded  
12 everywhere in California except for Lake County, I  
13 think the more pragmatic view is that it will be a  
14 long time before the state standard is met,  
15 certainly in San Joaquin County, certainly  
16 throughout most of California.

17 It's a standard that is just -- doesn't  
18 show much hope of being met anytime soon anywhere  
19 in the state.

20 And that prediction, by the way, and  
21 that projection is no different than the  
22 projection that one would have made at the time  
23 the Tracy Peaker project was approved.

24 Q Thank you. Earlier in your testimony  
25 you mentioned that the actual emissions during

1 plant operation are expected to be much lower than  
2 what staff has analyzed.

3 Is the applicant willing to accept the  
4 air emission permit limits at the actual emission  
5 levels that you allude to?

6 A The final determination of compliance  
7 imposes those limits. And, of course, we're  
8 proposing to accept them.

9 Q But isn't it your testimony that your  
10 permit level -- your actual emissions could be  
11 potentially lower than that?

12 A I'm sorry, are you referring to a  
13 particular statement in my testimony?

14 Q Yes, on page 2.1-6.

15 A No. I think it's important for a plant  
16 to insure that they comply with emission limits  
17 all of the time under all operating conditions.  
18 That's certainly what I advise my clients to do.

19 In order to insure that you meet  
20 emission limits all of the time you have to design  
21 the plant to have levels that are lower than what  
22 the permit limits are.

23 If you were to reduce emission limits  
24 back to what the expected performance was, well,  
25 it's only expected performance and you might

1 exceed those levels 50 percent of the time. And I  
2 think that would be unacceptable.

3 Consequently, I'm very comfortable with  
4 the limits that have been proposed. I think the  
5 plant can meet them on a consistent basis. And  
6 I'm also very confident in my conclusion that in  
7 practice the plant's levels will be much lower  
8 than that.

9 Q But you're not willing to commit to  
10 that?

11 A In terms of reducing the emission  
12 limits? No, because then I couldn't make that  
13 statement.

14 Q On page 2.1-7 you state that the impacts  
15 of the East Altamont Energy Center on ambient air  
16 quality was evaluated using dispersion models.  
17 Did the modeling analyze ozone impacts and  
18 secondary PM10 formation?

19 A No.

20 Q On page 2.1-8 you state that three  
21 analyses were performed for the cumulative air  
22 quality impacts of the East Altamont Energy  
23 Center. In the first analysis that you mentioned  
24 were new business parks and new residential  
25 communities and associated area and mobile sources

1 considered by the applicant?

2 A No.

3 Q In the second analysis were these same  
4 sources considered in the analysis?

5 A I'll need to refer to those analyses to  
6 be sure. With respect to the first one, the first  
7 analysis was done in accordance with modeling  
8 protocol filed with the Commission which was  
9 approved by the Commission, which did not indicate  
10 that development projects would be included.

11 As you recall, that issue came up  
12 afterwards and was the subject of briefing before  
13 the Committee.

14 For the Tracy Peaker project there was a  
15 response to data request that was filed on May 17,  
16 2002. And in table 2.10-1 of that data response  
17 there are -- and that table, by the way, is  
18 entitled, quote, cumulative modeling analysis  
19 criteria pollutant emission rates.

20 In that table emission rates were shown  
21 for the Tracy Hills specific plan, the South  
22 Schulte specific plan and Mountain House. Now I  
23 don't have the modeling files and have not  
24 reviewed them personally, but by looking at this  
25 table it would appear to me that the cumulative

1 impacts analysis filed for the Tracy project did,  
2 in fact, include those three development projects,  
3 as well as the three power projects that we've  
4 been discussing.

5 Q Did it also include the --

6 A I'm sorry, I'm still trying to answer  
7 your question about Tesla.

8 Q Okay.

9 A With respect to Tesla I don't have  
10 enough information with me today to answer  
11 specifically whether that analysis included the  
12 Mountain House project or other housing  
13 development projects. It may have, but I don't  
14 know for sure.

15 Q And was the Gateway Business Park  
16 included in the Tracy analysis?

17 A No, it was not. I have not heard of the  
18 Tracy -- excuse me, the Gateway project in any  
19 previous filing by the staff.

20 Q It was recently approved, I believe. On  
21 page 2.1 and in the proposed condition of  
22 certification you state that the applicant would  
23 provide approximately \$1 million to San Joaquin  
24 Valley Air Pollution Control District.

25 What are the required tons per year, and

1 for which specific air pollutants was this  
2 agreement formed?

3 A The mitigation agreement with the San  
4 Joaquin District includes a table that's labeled  
5 exhibit A2, which shows the calculation of  
6 mitigation requirements based on -- and this  
7 calculation included a review of both ozone  
8 precursors and PM10.

9 And based on this review the San Joaquin  
10 District concluded that roughly an additional 33  
11 tons of ozone precursor mitigation would be  
12 required as compared with what the plant would  
13 have been required to do had it been subject to  
14 the San Joaquin Valley District's rules.

15 That 33 ton number roughly was then  
16 multiplied by a factor of two, as a safety margin,  
17 for a total of 66.8 tons of mitigation of ozone  
18 precursors.

19 The San Joaquin District conclusion is  
20 that no additional mitigation for PM10 was  
21 required. But they did review that pollutant.

22 Q And aside from the money are any  
23 specific tons required in the agreement?

24 A No, there's no numerical value never of  
25 tons of mitigation required.



1           Q     So once the money is paid the applicant  
2     has no further responsibility to mitigate  
3     potential impacts in the San Joaquin Valley, is  
4     that correct?

5           A     Similar in concept to the agreement that  
6     the Energy Commission negotiated for the Los  
7     Esteros project, that's correct.

8           Q     Are you familiar with the settlement  
9     agreement between the Tesla Power Plant and the  
10    San Joaquin Air Pollution Control District?

11          A     Yes, I am.

12          Q     Are you aware that it has been adopted  
13    by the District?

14          A     My copy doesn't have all the signatures  
15    on it. Yes, my understanding is it's been adopted  
16    by the San Joaquin District.

17          Q     And are you also aware that it sets  
18    forth a 27 percent transport factor from Bay area  
19    offsets to the San Joaquin?

20          A     It calculates mitigation in a  
21    fundamentally different manner, and one of the  
22    factors that's in there is a 27 percent  
23    contribution factor, yes.

24          Q     Now, on page 2.1- --

25                HEARING OFFICER WILLIAMS: Excuse me,

1 counsel, is that part of the record? Is that part  
2 of your testimony, that Tesla mitigation  
3 agreement?

4 MS. DeCARLO: We referred to it, I'm not  
5 sure --

6 MR. SARVEY: I submitted it as an  
7 exhibit.

8 HEARING OFFICER WILLIAMS: So, okay.

9 MR. SARVEY: I've submitted it as an  
10 exhibit, yes.

11 MS. DeCARLO: Okay.

12 HEARING OFFICER WILLIAMS: Okay, thank  
13 you.

14 MR. RUBENSTEIN: And, Ms. DeCarlo, I  
15 need to correct my answer.

16 BY MS. DeCARLO:

17 Q Sure.

18 A The 27 percent factor in the Tesla  
19 agreement only applies to ozone precursors for  
20 PM10. The factor is 66.2 percent. And SO2  
21 emissions are not included in this analysis, just  
22 like they're not included in the analysis for East  
23 Altamont.

24 Q Now, on page 2.1-11 you state that the  
25 Bay Area Air Quality Management District expressly

1 addressed PM10 impacts from the East Altamont  
2 Energy Center.

3 Is it your testimony that the BAAQMD's  
4 conclusions specifically address and analyze PM10  
5 impacts to the San Joaquin Valley?

6 A Oh, yes. Our modeling analysis clearly  
7 included receptors within the San Joaquin Valley  
8 air basin. We did not stop at the District  
9 boundary.

10 Q Now also on that page you state that the  
11 ozone, and to a lesser extent PM10, are both  
12 regional air quality problems. If the summer  
13 inversion layer in San Joaquin Valley is 1500 to  
14 3000 feet, which is well below the topography to  
15 the east and west of the East Altamont Energy  
16 Center, which is described in the San Joaquin Air  
17 Pollution Control District 2002/2005 rate of  
18 progress plan, would the summer ozone impacts from  
19 the East Altamont Energy Center air emissions be  
20 in San Joaquin Valley region rather than the Bay  
21 Area?

22 A You're going to hate this but I'm still  
23 trying to find the quote you're referring to on  
24 page 2.1-11.

25 Q Sure.

1           A     I think I got your question, though, but  
2     let me make sure I understand what you're  
3     referring to here.

4                 No, I'm missing it.  What's the page,  
5     2.1-11, and what quote were you referring to?

6           Q     The bottom of the third paragraph.

7           A     Okay, so it's the bottom of the third  
8     paragraph where I say, in fact, ozone, and to a  
9     lesser extent PM10, are both regional air quality  
10    problems?

11          Q     Correct.

12          A     Okay.  And then your question is if in  
13    the summertime the inversion height is between  
14    1500 and 3000 feet?

15          Q     Yes.

16          A     Wouldn't the ozone impacts from the  
17    project occur within the San Joaquin Valley air  
18    basin?

19          Q     Yes.

20          A     And you've also said that 1500 to 3000  
21    feet was an elevation that was lower than the  
22    terrain on both the east and west of the project  
23    site?

24          Q     Yes.

25          A     Well, I'm not sure I agree with your

1       characterization of inversion heights in the  
2       summer.  They may be correct, but I'm going to  
3       assume them for the purpose of answering your  
4       question.  With respect to terrain height, on the  
5       eastern part of the project site the only time you  
6       get to terrain that's 1500 or 3000 feet high  
7       you're in the Sierra foothills, which it is not  
8       going to be a particularly significant factor for  
9       dispersion.

10               But under those kinds of conditions  
11       then, yes, I would expect that most of the ozone  
12       impacts associated with the project would be  
13       within the San Joaquin Valley air basin, although  
14       not necessarily in the vicinity of Tracy.

15               Q     And just for clarification then, the  
16       topography described is included in the San  
17       Joaquin Air Pollution Control District 2002 and  
18       2005 rate of progress plan.

19               Similarly, --

20               A     I'm sorry, is that a question?

21               Q     No, it's a lead-in to the following  
22       question.

23               A     Okay.

24               Q     Similarly, if the winter inversion layer  
25       in San Joaquin Valley is below the topography just

1 mentioned, would the winter PM10 impacts from East  
2 Altamont Energy Center air emissions be in the San  
3 Joaquin Valley region rather than the Bay Area?

4 MR. WHEATLAND: Before the witness  
5 answers the question, can we see that rate of  
6 progress plan to which counsel is referring?

7 HEARING OFFICER WILLIAMS: Do you have  
8 it?

9 MS. DeCARLO: No, we did not bring it.

10 MR. SWANEY: It's available on the San  
11 Joaquin website.

12 MR. RUBENSTEIN: But I don't -- I'm  
13 sorry.

14 MR. SWANEY: We are quoting out of it  
15 exactly --

16 MR. WHEATLAND: With the record noted  
17 that the actual document that's being quoted from  
18 is not available in the hearing room, I have no  
19 objection to the witness answering the question.

20 HEARING OFFICER WILLIAMS: Okay, thank  
21 you. So noted.

22 MR. RUBENSTEIN: I guess I'd have to say  
23 that I'm not sure if that document discusses the  
24 topography of the East Altamont site. Certainly  
25 if you talk about the broader San Joaquin Valley

1 air basin, then characterization of the topography  
2 is correct.

3 But the East Altamont site is located to  
4 the far west of that, consequently the eastern  
5 boundary is not going to be particularly relevant.

6 With respect to your question about PM10  
7 impacts, the windrows that are provided in the  
8 AFC, and which the staff has relied on, as well,  
9 indicate that in general during the wintertime you  
10 have a fairly high frequency of winds that occur  
11 in the quadrant to the west-southwest.

12 And under those kinds of meteorological  
13 conditions I would expect the project's impacts of  
14 all pollutants, not just PM10, to actually occur  
15 in the southern portion of the Sacramento Valley  
16 as opposed to going into the San Joaquin Valley.

17 Going to the greater Central Valley, but  
18 there's going to be some diversion where sometimes  
19 the winds will take them further towards the  
20 north, into the Sacramento Valley, sometimes  
21 further to the south to the San Joaquin Valley.

22 Q How about during stagnant conditions?

23 A I'd have to answer this hypothetically  
24 because without looking specifically at some  
25 weather data to understand what you mean by

1       stagnant conditions, under most stagnant  
2       conditions in the San Joaquin Valley you have  
3       extremely low inversion heights. And under those  
4       conditions the impacts from the plant's HRSG  
5       exhaust factor would likely be about the inversion  
6       height. It would not impact ground level  
7       concentrations at all.

8               There may be other kinds of stagnation  
9       conditions that would occur with much lesser  
10      frequency where you'd have a high inversion  
11      height. But I'm not familiar with any  
12      meteorological conditions in the San Joaquin  
13      Valley that would lead to that combination in the  
14      wintertime.

15             Q     Now, on page 2.1-12 you state that while  
16      additional progress is certainly needed to achieve  
17      the state ozone standard, as well as the new  
18      federal eight-hour average ozone standard, it  
19      would inappropriate to characterize the project  
20      area as having a severe ozone problem.

21             Would you agree that given the  
22      likelihood that the San Joaquin Valley Air  
23      Pollution Control District will be redesignating  
24      as extreme, that the area has an extreme rather  
25      than severe ozone problem?



1           A     No, because the San Joaquin Valley air  
2     basin is required, under federal law, to have the  
3     single designation that runs from San Joaquin  
4     County to Kern County. And it's based on the  
5     worst air quality at any location within there.

6           The EPA has not agreed to look at  
7     different designations. So just because the San  
8     Joaquin Valley air basin, as a whole, may be  
9     designated as an extreme nonattainment area,  
10    doesn't speak at all to the question of what ozone  
11    air quality is like in the Tracy area.

12          Q     But you would agree that the entire  
13    District, as a whole, has a problem with ozone?

14          A     Yes.

15          Q     Now, in your testimony you argue against  
16    a 10 ppm ammonia slip level. Is 5 ppm technically  
17    feasible?

18          A     A 5 ppm slip limit is technically  
19    feasible depending on what level of compliance you  
20    expect, what NOx level you expect the unit to  
21    meet, and what you expect the catalyst lifetime to  
22    be. All of those are factors in determining  
23    whether a 5 ppm slip level is important.

24                And then a fourth factor is what the NOx  
25    level is coming from the gas turbine, which

1 relates to how hard, if you will, the SCR catalyst  
2 has to work in order to achieve a particular NOx  
3 limit. All of those are factors.

4 Q So is it your testimony that under  
5 certain conditions 5 ppm ammonia slip level is  
6 feasible?

7 A Yes.

8 Q What is the recommendation for ammonia  
9 slip from CARB and USEPA?

10 MR. WHEATLAND: For this project?

11 MS. DeCARLO: Just general  
12 recommendations.

13 MR. RUBENSTEIN: The California Air  
14 Resources Board recommends that air districts  
15 consider the 5 ppm slip level in combination with  
16 a 2.5 ppm NOx level. I'm not aware of any Air  
17 Resources Board recommendations that go to the 2  
18 ppm NOx level that's now required of this project.

19 With respect to EPA, the answer is  
20 mixed. EPA, in some projects that I have  
21 reviewed, has recommended a 5 ppm slip level. And  
22 yet in other projects where EPA has issued the  
23 permits, they have had either a 10 ppm slip level  
24 or no ammonia slip level at all.

25 So the answer with respect to EPA is it

1 varies.

2 BY MS. DeCARLO:

3 Q Now, in your testimony you mentioned  
4 that the project area is probably ammonia rich.  
5 Is it your testimony that the project's ammonia  
6 emission would have no potential whatsoever to  
7 contribute to secondary PM10 in the area?

8 A No, I don't believe I said that.

9 Q Okay. So it's not your testimony that's  
10 there's no potential?

11 A No.

12 Q Sorry, that was a double negative. So  
13 it is your testimony that there is possibly a  
14 potential for the project's emissions to impact  
15 the area, ammonia emissions?

16 A I'm sorry, there were several aspects of  
17 your question that I'm trying to make sure I  
18 understand and get straight.

19 I don't believe that the ammonia  
20 emissions of this plant will contribute  
21 significantly to PM10 formation in the broader  
22 sense of the area. Under no circumstances do I  
23 think that the ammonia emissions from this plant  
24 will affect PM10 levels within the close proximity  
25 to the plant, such as the Tracy area, because of

1 the time involved in photochemical reactions  
2 necessary to convert ammonia into ammonia nitrate.

3 Q Okay, thank you.

4 MS. DeCARLO: That's all staff's  
5 questions.

6 HEARING OFFICER WILLIAMS: Mr. Sarvey.  
7 Well, let me -- yeah, the Air District, do you  
8 have any cross?

9 MR. SWANEY: Do I have a cross of Mr.  
10 Rubenstein?

11 HEARING OFFICER WILLIAMS: Yes.

12 MR. SWANEY: No.

13 HEARING OFFICER WILLIAMS: Okay. Mr.  
14 Sarvey.

15 CROSS-EXAMINATION

16 BY MR. SARVEY:

17 Q Did you just testify that ammonia  
18 emissions will not affect the project area around  
19 Tracy?

20 A I said that they won't significantly  
21 affect PM10 formation in the area around Tracy,  
22 right.

23 Q Have you made an estimate, or do you  
24 have a number for me as to what this ammonia  
25 formation will be?

1           A     A quantity of estimate? No, I don't.  
2     Ammonia formation or --

3           Q     PM2.5 formation from the ammonia  
4     emissions.

5           A     No, I do not.

6           Q     Then how can you tell us that it's not  
7     significant if you don't even have an estimate of  
8     it?

9           A     It's based on my experience and  
10    understanding how long the photochemical reactions  
11    take. Reactions for converting -- for ammonia  
12    forming particulate nitrate, typically take hours  
13    to occur. And they are dependent on the amounts  
14    of ammonia present in the air, on the amount of  
15    nitric acid in the air, NOx emissions from all  
16    different types of sources, and on meteorological  
17    conditions.

18                   And based on those things I can say  
19    qualitatively that I don't think that there's  
20    going to be significant PM10 formation in this  
21    area as a result of the ammonia emissions; but, I  
22    cannot give you a quantitative answer.

23           Q     And do you have a reading for the  
24    ammonia levels in this area?

25           A     You know, Bob, I do not. I reviewed the

1 ammonia levels when I prepared that discussion on  
2 page 2.1-17 in my testimony, but I did not include  
3 the numbers in there.

4 Q Okay. So, assuming there is no -- well,  
5 let's assume that there is, since we can't verify  
6 there isn't any local impact from ammonia  
7 emissions, how about regional level, what do we  
8 expect to see from what will impact the region  
9 from these ammonia emissions and formation of  
10 secondary PM2.5?

11 A Okay, first I need to correct my  
12 previous answer. I just saw in my testimony I  
13 said quite clearly that there are no data on  
14 ambient ammonia levels. What we do, because of  
15 that lack of data, is to infer, based on the  
16 relative sulfate and nitrate concentrations,  
17 whether a region is ammonia rich or not.

18 And you can tell by the ratio of those  
19 two whether there's sufficient ammonia for further  
20 reactions to occur. So, I did, by inference, not  
21 by actual ammonia data.

22 In terms of regional formation of  
23 particulates, the longer the period of time you  
24 have for the reactions to occur the greater the  
25 possibility that you may have some particulate

1 formation because the ammonia may be transported  
2 into a region that is, in fact, not ammonia rich.  
3 But I did not do any calculations or assessment of  
4 that, either.

5 Q So, we could reasonably say that we  
6 don't have any estimates of ammonia nitrate PM2.5  
7 formations locally or regionally, is that correct?

8 A You don't have any quantitative  
9 estimates; what you have are the qualitative  
10 judgments by me, by the Bay Area District and by  
11 the San Joaquin District.

12 Q So in the absence of any say  
13 quantitative formation --

14 A Right.

15 Q How many pounds of ammonia is this  
16 facility going to emit per year?

17 A You can find that information in the AFC  
18 at table 8.1-22; it's about 274 tons per year of  
19 ammonia.

20 Q So in the absence of any quantitative  
21 information or any formula for deriving PM2.5  
22 formation from ammonia, and we have 274 tons of  
23 ammonia being emitted from this facility, so we  
24 have a degree of uncertainty as to whether this  
25 ammonia impact is going to be significant or not,

1 is that correct?

2 A There's no uncertainty in my mind. It's  
3 my opinion that even at that level that there is  
4 no significant contribution to ambient PM2.5  
5 levels.

6 Q But you have no figures to present us in  
7 terms of ammonia concentrations in the area, or  
8 projected PM2.5 ammonia emissions, correct?

9 A What we have is just the information in  
10 my testimony, right.

11 Q Okay. Throughout your testimony you've  
12 testified that the ozone impacts from this  
13 facility are a regional problem, is that correct?

14 A That's correct.

15 Q And then on page 2.1-4 you testify that  
16 you don't expect that the region has a significant  
17 ozone problem, is that correct?

18 A I don't think I said that, I don't see  
19 that in there.

20 Q I believe you say it's incorrect to  
21 characterize the project area as having a  
22 significant ozone problem?

23 A Actually what I said is I thought it was  
24 inappropriate to characterize the area as having a  
25 severe ozone problem. Maybe I'm mincing words



1 here, but legally those mean different things, so  
2 I'm trying to be precise.

3 Q So essentially the area doesn't have a  
4 severe ozone problem and the impacts from this  
5 facility are regional, correct?

6 A Yes, that's my opinion.

7 Q This is an ozone summary from the  
8 California Air Resources Board. Mr. Rubenstein,  
9 who has the most exceedances of the state one-hour  
10 ozone level according to this chart on the bottom,  
11 year 2002, data through October 17, 2002?

12 A The most exceedances for the state  
13 standard are in the San Joaquin Valley air basin,  
14 the most exceedances for the federal one-hour  
15 standard are in the South Coast air basin, and the  
16 most exceedances for the federal eight-hour  
17 standard are in the San Joaquin Valley air basin.

18 Q So does this indicate to you that the  
19 San Joaquin Valley air basin has a severe ozone  
20 problem?

21 A Yes, but your earlier question to me was  
22 about this project area as opposed to the air  
23 basin as a whole.

24 Q Oh, I thought the impacts were to the  
25 region, not the project area. That's what I'm

1 addressing.

2 A That's correct, but your question to --

3 Q Thank you.

4 A -- me wasn't about the region, excuse  
5 me, about the area.

6 HEARING OFFICER WILLIAMS: We've marked  
7 as your next in order, Mr. Sarvey, which was 6J.  
8 We'll leave it for identification now till you  
9 move it.

10 BY MR. SARVEY:

11 Q On page 2.1-5 you state, the positive  
12 trend in PM10 air quality in San Joaquin Valley  
13 air basin is confirmed by conclusions of the  
14 California Air Resources Board. Debatable PM data  
15 shows some variation during the trend period, but  
16 overall there's been a downward trend. Part of  
17 the variation can be attributed to meteorology.  
18 Long periods of stagnation during the winter  
19 months allow PM10 to accumulate over many days with  
20 the resulting high concentrations.

21 So, it's your testimony that this  
22 positive trend in PM10 air quality in San Joaquin  
23 Valley air basin is confirmed by conclusions of  
24 the Air Resources Board, is that correct?

25 A Yes.

1           Q     Can you read the first sentence of what  
2     I just handed you there, please, Mr. Rubenstein?

3           A     Yes. "Direct emissions of PM10 are  
4     increasing in the San Joaquin Valley air basin  
5     between 1975 and 2010."

6           Q     Thank you.

7                     HEARING OFFICER WILLIAMS: We've marked  
8     it 6K for identification. Mr. Sarvey.

9     BY MR. SARVEY:

10          Q     On page 2.1-6 on the second paragraph,  
11     last sentence, it states: The most recent three-  
12     year national average PM2. concentration is 16.4  
13     mcg/cubic meter, just above the federal standard  
14     of 15 mcg/cubic meter. That is for the localized  
15     project area, is that correct?

16          A     That was for Stockton, which was the  
17     closest monitoring station for PM10 that we could  
18     find in the San Joaquin Valley.

19          Q     Earlier you stated that it would be  
20     incorrect to characterize the project area as  
21     having a severe PM10 problem?

22          A     I believe that quote with respect to  
23     ozone. I don't know that I made any statement  
24     like that with respect to PM10. But I could be  
25     wrong. If you've got one, maybe you can point me

1 to it.

2 Q So it's your testimony that the project  
3 area does have a severe PM10 or 2.5 problem?

4 A I didn't make a statement about that one  
5 way or another. And I don't have an opinion about  
6 that, because the term severe, I don't know if  
7 you're using that in a regulatory sense or exactly  
8 how you're defining that term.

9 Q Well, I'm defining it in terms of 16.5  
10 mcg/cubic meter for the national PM2.5  
11 concentration. That's what I'm asking.

12 A I think a level like that is comparable  
13 to or better than most other parts of California.

14 Q Now you say in the second-to-the-last  
15 paragraph on page 2.1-5 you're referring to trends  
16 in PM10, and you say both of the measurements that  
17 you cite indicate a slight positive trend in PM10  
18 levels in the project area, is that correct?

19 A I said most of the measures, and maybe  
20 that term is a little confusing, I'm not referring  
21 to different measurement techniques, but two  
22 different statistics. One is a three-year moving  
23 average at the PM-10 levels, and then the second  
24 is the three-year moving average of the number of  
25 violations.

1           Q     I'm going to read you a series of  
2     numbers here from the ARB almanac. 1993, 104  
3     mcg/cubic meter; 1994, 109; 1995, 109; 1996, 127;  
4     1997, 130; 1998, we dipped to 105; and 1999, 150.  
5     Does that sound like a trend that's going down to  
6     you?

7                     (Pause.)

8           HEARING OFFICER WILLIAMS: Are you  
9     familiar with the text that he's reading?

10          MR. RUBENSTEIN: No, and the reason why  
11     I'm hesitating is because I don't know if that is  
12     data for a specific station, or is that data from  
13     the San Joaquin Valley, as a whole, or what is he  
14     referring to?

15     BY MR. SARVEY:

16          Q     It's the County of San Joaquin.

17          A     Oh, it's for County of San Joaquin.

18          HEARING OFFICER WILLIAMS: Why don't you  
19     show it to him, Mr. Sarvey?

20          MR. SARVEY: Sure.

21                     (Pause.)

22          MR. RUBENSTEIN: I'm sorry, Mr. Sarvey,  
23     the reason why I'm taking so long to answer your  
24     question is I'm looking for the notes that I took  
25     when I wrote that sentence.

1           No, I would agree that those numbers do  
2           not suggest a slight downward trend, and those are  
3           quite obviously different numbers than those that  
4           I had looked at, so they must be from a different  
5           monitoring station.

6           BY MR. SARVEY:

7           Q     Okay, then from 1995 to 1999 can you  
8           read off the days above the state standard from  
9           those time periods 1995 to 1999?

10          A     Okay, so we're starting now in 1995  
11          rather than 1994, is that right?

12          Q     I think it's --

13          A     So we're ignoring --

14          Q     I think you can start in '94 or 1995,  
15          wherever you'd like.

16          A     Okay, so it's 60 days above the state  
17          24-hour standard in 1994; 18 in 1995; 18 in 1996;  
18          30 in 1997; 48 in 1998; and 60 in 1999.

19          Q     Thank you.

20                HEARING OFFICER WILLIAMS:  It may be  
21          helpful, Mr. Sarvey, if you can provide us a copy  
22          of that page at some point.  We'll bookmark it for  
23          your next in order, which would be 6L.

24          BY MR. SARVEY:

25          Q     What is your definition of a significant

1 localized air quality impact for PM10?

2 A I'm sorry, Mr. Sarvey?

3 Q What is your definition of a significant  
4 localized air quality impact for PM10?

5 A I rely on the regulatory definition  
6 which would be a 24-hour impact due to the plant  
7 by itself in excess of 5 mcg/cubic meter, or an  
8 annual average PM10 concentration due to the plant  
9 in excess of 1 mcg/cubic meter.

10 Q And what was your initial estimate of  
11 your project's impact in the AFC for PM10, I  
12 believe it was 24 hour?

13 A For the record that number is in table  
14 8.1-29 of the AFC on page 8.1-40. And the maximum  
15 24-hour average PM10 impact was 6.6 mcg/cubic  
16 meter, and the maximum annual average was 0.6  
17 mcg/cubic meter.

18 Q Thank you. Have you performed any  
19 cumulative project analysis other than the one  
20 that you filed on August 27, 2001?

21 A I believe I summarized the cumulative  
22 impact analyses we were relying on in my  
23 testimony. And there was one in the AFC which is  
24 the one you're referring to. Then there was the  
25 analysis we performed in accordance with the

1 protocol approved by the Commission, which showed  
2 that no additional analysis was required.

3 Those are the only two analyses that we  
4 have submitted, although we've relied on analyses  
5 from the Tesla and Tracy proceedings, as well.

6 Q So the staff did ask you to perform an  
7 additional analysis, is that correct?

8 A The staff had asked us to perform an  
9 additional cumulative analysis. That issue was  
10 debated before the Committee, and the Committee  
11 issued a ruling indicating that they believed that  
12 the analyses that had already been performed were  
13 sufficient.

14 Q So you have not subsequently performed  
15 that analysis, is that correct?

16 A No.

17 Q So we have to rely on the cumulative  
18 analysis that have been provided us from the folks  
19 from Tesla, is that right?

20 A In addition, --

21 Q Or is it Tracy Peaker, as well?

22 A In addition to the two that we provided,  
23 yes, we're relying on those other two, as well.

24 Q Okay. To your knowledge do either one  
25 of those analyses include the concerns of the



1 staff that they addressed when they asked you to  
2 provide them with that analysis in December of  
3 2001?

4 A I have no idea whether the staff in this  
5 case raised those concerns or any other concerns  
6 with the applicants of the Tracy and Tesla cases.  
7 So I also don't know whether those concerns were  
8 addressed.

9 Q You indicate that you believe that the  
10 PM10 concentrations that are going to be emitted  
11 by the East Altamont Energy Center are regional in  
12 nature as far as their impacts, is that right?

13 A What I said was that I believe that  
14 there were no significant localized PM10 impacts  
15 from the project. And that the project would  
16 contribute to existing regional violations.

17 Q Have you seen the staff's analysis filed  
18 in the errata?

19 A Yes, I have.

20 Q Does it provide an analysis that  
21 indicates that the impacts may be more than 5  
22 mcg/cubic meter?

23 A No, it provides some conclusory  
24 statements to that effect, but there's no analysis  
25 that's presented.

1           Q     Okay.  And in your PDOC, or in your  
2       submissions to the Bay Area, what is your  
3       estimated PM10 impacts maximum?

4           A     The final modeling analysis that we  
5       submitted to the Bay Area District on November 29,  
6       2001 shows at table 4 a maximum project impact of  
7       4.9 mcg/cubic meter.

8           Q     4.97?

9           A     4. -- the letter that I'm looking at  
10      just says 4.9 mcg/cubic meter.

11          Q     Would you like me to provide you with  
12      the statement that says 4.97?

13          A     Sure.

14          Q     I will before we're done.  I'll move on  
15      so we don't tie everybody up here.

16                 Does that analysis include the impacts  
17      from your PM from your cooling tower?

18                 (Pause.)

19                 HEARING OFFICER WILLIAMS:  Let's go off  
20      the record.  The court reporter needs to make a  
21      phone call.

22                 (Off the record.)

23                 PRESIDING MEMBER KEESE:  All right,  
24      we've assured ourselves that we're going to be  
25      able to keep the court reporter, so we're --

1 (Laughter.)

2 PRESIDING MEMBER KEESE: -- we're back,  
3 and we have a question from Mr. Sarvey pending,  
4 and an answer on its way.

5 HEARING OFFICER WILLIAMS: Do you need  
6 to repeat it, Mr. Sarvey?

7 BY MR. SARVEY:

8 Q I just asked if the effects of the PM10  
9 emissions from the cooling tower figured into his  
10 maximum concentrations in the PDOC.

11 A The PDOC does not contain our analysis.  
12 That contains the District's analysis.

13 Our analysis includes the cooling tower.

14 Q And that was the 4.97?

15 A That was -- no, that was 4.9 mcg/cubic  
16 meter. The 4.97 is the number in the PDOC. I'm  
17 not sure where that comes from.

18 Q Okay.

19 A Our analysis was 4.9.

20 Q It's actually in the FDOC, not the PDOC,  
21 but it's --

22 A It's in both.

23 Q I got it, be able to photocopy it here  
24 for you in a second.

25 A I've got the PDOC, so I found where that

1       number is. But, as I said, that's not our number;  
2       that's the District's number.

3           Q     Oh, okay. So I need to quiz the  
4       District on that. The information you provided to  
5       the District was 4.9, correct?

6           A     That's correct.

7           Q     All right. And how did you derive that  
8       estimate? Was that from a vendor guarantees  
9       performances of this particular equipment or where  
10      did you come up with that number?

11          A     Well, we start with emission rates,  
12      which in turn are based on a combination of plant  
13      design criteria, vendor guarantees and engineering  
14      judgment.

15                Those emission rates are then used in a  
16      dispersion air quality model in accordance with  
17      the protocol that was reviewed and approved by  
18      both the Bay Area District and the Commission  
19      Staff. And that's how we convert those emission  
20      rates into the concentrations that I've been  
21      discussing.

22          Q     And do you have this particular  
23      equipment configuration in practice at the present  
24      time, or is this sort of an experimental type  
25      thing that's never -- that you're proposing? Has

1 it been used in practice by you before?

2 A Combined cycle gas turbines?

3 Q No, no, no, no, with the Frame 7B.

4 A The specific 7FB gas turbine?

5 Q Right.

6 A No, I've not seen any in-use performance  
7 data from that engine.

8 Q Weren't your estimates to the Bay Area  
9 based on some source test you have from Sutter and  
10 another facility, is that correct?

11 A They were based on engineering judgment  
12 based on a large number of test results I've  
13 reviewed. We submitted to the Bay Area District,  
14 as examples, data from the Sutter facility and  
15 from the Los Medanos Energy Center.

16 Q And do you have a factor for margin  
17 error on any of that?

18 A Yes, I do. When I review that data and  
19 make recommendations to my clients, I usually add  
20 a margin of either two or three standard  
21 deviations on top of a mean to account for  
22 variability. And then added a second safety  
23 margin on top of that.

24 Q So you're saying it's about 2 percent?

25 A I'm sorry, Bob, what's 2 percent?

1 Q Your standard error.

2 A No, no, no, two or three standard  
3 deviations, not 2 or 3 percent. There's enough  
4 variability in the data that the standard  
5 deviation, the test results are somewhere between  
6 50 and 100 percent.

7 The bottomline is that I started with  
8 average emission rates that were in the range of  
9 three to five pounds per hour and after I added my  
10 engineering judgment safety margins the emission  
11 rates went up to 9 to 11 pounds per hour.

12 Q Can you give me a percentage figure on  
13 your margin of error that you normally provide  
14 your clients?

15 A As I said statistically it's two to  
16 three standard deviations. And, no, I can't give  
17 you that as a percentage. I've got that number in  
18 my laptop, but I don't have it handy.

19 Q So we do have a degree of uncertainty  
20 here as to what the actual concentrations will be  
21 as far as your standard deviation, is that  
22 correct?

23 A Well, we were talking about emission  
24 rates, not concentrations. And in terms of the  
25 uncertainty, given the technique I use to develop

1       those numbers, I think that there's less than 1  
2       percent chance that the numbers will, in fact, be  
3       greater than the numbers I've recommended.

4           Q       So assuming that the District's correct  
5       and your actual concentrations for 4.97 and we add  
6       a 1 percent rate, that brings us over the  
7       significance level of 5 mcg/cubic meter, is that  
8       correct?

9           A       Well, you were only asking about the  
10      uncertainty in the turbine emission rates. And  
11      I'm not sure that all or even most of that 4.97  
12      mcg/cubic meter is, in fact, associated with the  
13      turbines.

14                 I think that information might be  
15      contained in the November 2001 filing that we  
16      provided to the Air District. And looking just at  
17      the turbines I think those concentrations were  
18      less than 4 mcg/cubic meter on a 24-hour average  
19      basis.

20                 So the remainder of the difference  
21      between that number and the 4.9 mcg/cubic meter  
22      would be associated with the cooling tower and the  
23      fire pump engine. The cooling tower, in terms of  
24      its emission rates, there is no uncertainty  
25      because those are basically monitored on a

1 continuous basis. The drift rate is designed into  
2 the plant and the amount of solids in the water is  
3 monitored on a consistent basis.

4 So I don't think it's appropriate to  
5 take 4.97 and add even 1 percent on top of that.

6 In addition, in my experience,  
7 dispersion models of this type tend to be  
8 conservative and over-predict concentrations. So  
9 that to the extent that there's any variability  
10 the likely real impacts are going to be less than  
11 the numbers we modeled, and not greater.

12 Q You place a lot of reliance on past CEC  
13 licensing plants, and in this case you cite the  
14 Morro Bay project. What air district or air basin  
15 was the Morro Bay project located in?

16 A San Luis Obispo Air District.

17 Q And where was its ERCs located?

18 A Most of its ERCs were located on site.

19 Q And then you cite the GWF Peaker plant.  
20 What basin was that located in?

21 A That was in the San Joaquin Valley air  
22 basin and in the San Joaquin Valley Air District.

23 Q And do we have -- we have a case similar  
24 to yours where a project is located in the Bay  
25 Area, but geographically is located in San Joaquin



1 Valley Air Pollution Control District. And that's  
2 the Tesla project. Now, isn't that a more  
3 representative case to judge CEC Staff performance  
4 and requirements than the Morro Bay case and the  
5 GWF case?

6 A My recollection that there's no final  
7 staff assessment, and I'm certain there's no  
8 Commission decision in the Tesla case. And that's  
9 why I was looking to Commission decisions, as  
10 contrasted with staff positions in a preliminary  
11 staff assessment.

12 Q Well, even the Morro Bay case, you're  
13 citing a staff position, but in any event I'll  
14 move on.

15 A It was actually the staff brief.

16 Q Okay, staff brief, okay. Are you aware  
17 that in the Tesla case they provided the San  
18 Joaquin Valley Air Pollution Control District a  
19 approximately \$1 million mitigation agreement? I  
20 believe you are.

21 A Yes, I am.

22 Q Are you aware that the CEC Staff is  
23 requiring local mitigation above and beyond that  
24 agreement?

25 A I don't know that the CEC Staff is

1 requiring anything --

2 Q Recommending. Pardon me, I'm sorry,  
3 Gary.

4 A No, I was not aware of that.

5 Q Okay.

6 A But it does not surprise me.

7 Q And, in fact, they're recommending PM10  
8 ERCs of --

9 HEARING OFFICER WILLIAMS: What are you  
10 reading from, Mr. Sarvey?

11 MR. SARVEY: This would be the PSA for  
12 Tesla, 4.1-47.

13 BY MR. SARVEY:

14 Q They're recommending PM10 ERCs 30 tons,  
15 SOx ERCs and NOx ERCs above and beyond the San  
16 Joaquin Valley Air Pollution Control District  
17 mitigation agreement.

18 You compare your emission reduction  
19 credits to the Tracy Peaker emission reduction  
20 credits in your analysis, correct?

21 A That's correct.

22 Q And all of the emission reduction  
23 credits for the Tracy Peaker are located in the  
24 San Joaquin Volley Air Pollution Control District,  
25 is that correct?

1 A Yes, but at much greater distances.

2 Q But they are in the same basin, correct?

3 A Yes, in terms of the political  
4 situation, yes, they're in the same air basin.

5 Q Did GWF purchase emission reduction  
6 credits for NOx from Calpine that you're aware of?  
7 Closer to the project site?

8 A It's possible, but I don't know about  
9 that.

10 Q Are you aware that the Tracy Peaker  
11 Plant reduced its operating hours as a condition  
12 of certification?

13 A No. I thought that that condition was  
14 not quite that clear.

15 Q It is. Do you intend to voluntarily  
16 reduce your operating hours?

17 A I don't think that's appropriate. We're  
18 licensing the plant for the maximum worst case  
19 emissions, and that's what we're designing it for.

20 Q Is it a condition of certification  
21 voluntary or involuntary a determining factor in  
22 whether the Commission licenses the project or  
23 not?

24 A I'm not sure I understand the question.  
25 Can you try that one again?

1           Q     Is a condition of certification whether  
2     it's voluntary or involuntary, is that a factor  
3     that you feel the Commission considers when  
4     licensing a plant?

5           A     A condition of certification is  
6     something that's imposed by the Commission. And  
7     so once it's imposed it's no longer voluntary.

8           Q     Thank you.

9           HEARING OFFICER WILLIAMS: Mr. Sarvey, I  
10    thought you indicated you were going to introduce  
11    the mitigation agreement as part of your  
12    presentation?

13          MR. SARVEY: I was actually going to do  
14    it under my cross-examination of the San Joaquin  
15    Valley representative, but I can do it now if  
16    that's preferential.

17          HEARING OFFICER WILLIAMS: Well, let's  
18    just mark it so --

19          MR. SARVEY: Okay.

20          HEARING OFFICER WILLIAMS: -- do you  
21    have copies of it?

22          MR. SARVEY: No, but I'll get some.

23          HEARING OFFICER WILLIAMS: Okay. We'll  
24    mark it your letter N, 6N for identification. N.  
25    N, right.

1                   And this is Tesla, you say? Mr. Sarvey,  
2                   it's Tesla?

3                   MR. SARVEY: GWF was the mitigation  
4                   agreement I was referring to, but --

5                   HEARING OFFICER WILLIAMS: GWF.

6                   MR. SARVEY: -- I have also have Tesla,  
7                   a couple of documents from Tesla, which was the  
8                   mitigation agreement that I referred to earlier  
9                   that the staff was wondering about --

10                  HEARING OFFICER WILLIAMS: Okay, so  
11                  you're going to --

12                  MR. SARVEY: I'll provide both of those.

13                  HEARING OFFICER WILLIAMS: Okay, so N  
14                  and O for identification.

15                  (Pause.)

16                  MR. SARVEY: I'll find all those  
17                  documents. I'm going to continue with Mr.  
18                  Rubenstein, if that's okay?

19                  HEARING OFFICER WILLIAMS: That's okay.

20                  BY MR. SARVEY:

21                  Q     Are you providing any emission reduction  
22                  credits for your SO emissions?

23                  A     We are providing 442 tons per year of  
24                  SO2 emission reductions. Those are being used to  
25                  mitigate our PM10 increases. And as shown in

1 table 1 of my testimony there's a net reduction of  
2 39 tons per year of NOx emissions which we believe  
3 serves to mitigate the PM10 impacts of the 21 tons  
4 per year of SOx that are left over, even if you  
5 believe that those 21 tons require mitigation.

6 So the answer to your question is yes,  
7 we are providing mitigation for those SO2  
8 emissions.

9 MR. SARVEY: Nothing further.

10 HEARING OFFICER WILLIAMS: Okay, then do  
11 you have any redirect?

12 MR. WHEATLAND: Just a few questions.

13 HEARING OFFICER WILLIAMS: Okay.

14 REDIRECT EXAMINATION

15 BY MR. WHEATLAND:

16 Q Mr. Rubenstein, you were earlier asked  
17 some questions about exhibit 6K. Have you had a  
18 chance now to review that document?

19 A Yes, I have.

20 Q And do you have additional comments  
21 regarding exhibit 6K?

22 A Yes, I do. Exhibit 6K is a page from  
23 the ARB almanac published by the California Air  
24 Resources Board. And this particular version is  
25 for calendar year 2002.

1           As you can see from the right the  
2       references to page 166 in the almanac, Mr. Sarvey  
3       gave me this when he asked me a question about a  
4       quote that's at the bottom of page 2.1-5 of my  
5       testimony, continuing over to the next page.

6           And as you can see, the citation I have  
7       for that quote is exactly the same document, but  
8       one page later, page 167.

9           And that, of course, raises the question  
10      why is there a difference. The quote that I was  
11      referring to from page 167 of the ARB almanac  
12      related to trends in PM10 air quality in the San  
13      Joaquin Valley air basin. The page handed out by  
14      Mr. Sarvey discusses the trend in PM10 emissions,  
15      not air quality.

16          And there's a very important distinction  
17      there. As you can see from the page that Mr.  
18      Sarvey handed out, PM10 emissions from all sources  
19      in the San Joaquin Valley increased from 366 tons  
20      per day, that's important, not tons per year, tons  
21      per day, up to 491 tons per day projected for  
22      2010. That's a substantial increase.

23          At the same time, on the following page  
24      of the almanac, which is where I took the quote  
25      from, the Air Resources Board shows a gradual

1 improvement in PM10 air quality.

2 How can you have that at the same time?

3 The answer is it's because what you breathe as  
4 PM10 is not just what's emitted as PM10. There  
5 are photochemical reactions that go on in the  
6 atmosphere converting organic compounds, sulfur  
7 dioxide, nitrogen dioxide into PM10.

8 And so it's quite possible to have large  
9 increases in PM10 emissions and yet still show  
10 progress in reducing or improving PM10 air quality  
11 if you're controlling the right things.

12 And in the case of the San Joaquin  
13 Valley, obviously a large portion of that has to  
14 do with controlling sulfur dioxide and nitrogen  
15 dioxide emissions as precursors to PM10 aerosols.

16 If you take a look further at the chart  
17 on page 166 that Mr. Sarvey handed out, it shows  
18 that stationary source emissions, emissions from  
19 power plant, oil production operations, things  
20 like that actually declined significantly from  
21 1975 to 2010, from 55 tons per day down to 28 or  
22 29 tons per day.

23 The large increase in emissions is  
24 associated with areawide sources. And as the text  
25 said, principally paved and unpaved road dust.



1           And so you have large increases in  
2       emissions from road dust showing up, dominating  
3       the emissions trend. But yet when you take a look  
4       at what people are actually breathing, it's a mix  
5       of road dust and other things. And there you see  
6       that there has, in fact, been some progress.

7           Now, the Environmental Protection Agency  
8       last year began enforcement action against the San  
9       Joaquin Air District because EPA believed the San  
10      Joaquin District was not moving quickly enough to  
11      control road dust emissions and other types of  
12      fugitive dust emissions.

13          And ultimately that dispute was  
14      resolved. The San Joaquin District tightened up  
15      its regulations and EPA, I believe, has approved  
16      that tightening and the enforcement action has  
17      been halted.

18          But it just goes to point out the  
19      important of taking a look both at the emissions  
20      sources and at air quality. We looked at air  
21      quality.

22          It's a little bit ironic that Mr. Sarvey  
23      presents this showing this dramatic increase in  
24      PM10 emissions from fugitive dust, because back  
25      when we first filed the application for this

1 project our principal PM10 reduction technique was  
2 paving roads. And it was going to be paving roads  
3 from a source that was relatively close to the  
4 project site.

5 We got very strong signals from the  
6 Commission Staff that they did not believe that  
7 paving roads was appropriate because it would not  
8 help air quality in terms of the PM10 that people  
9 breathe. And as a result we switched to a  
10 different approach to satisfying our ERC  
11 requirements.

12 I think that either approach would have  
13 been, in the end, acceptable. But again, I just  
14 wanted to emphasize the distinction between the  
15 emission trends showing an increase in the  
16 directly emitted PM10 that Mr. Sarvey referred to,  
17 and the statements on the following page of  
18 exactly the same document showing that PM10 air  
19 quality is slightly improving in San Joaquin  
20 Valley.

21 Q Mr. Sarvey also asked you questions  
22 concerning the comparison with Tracy ERCs with the  
23 East Altamont ERCs. Do you wish to comment  
24 further in response to those questions?

25 A Yes, I do. One second, please. Yes,

1       there is a comparison in my testimony on table 1  
2       that I referred to in answering Mr. Sarvey's  
3       question that goes directly to this point.

4               The top part of table 1 in my testimony  
5       shows two things. First, it shows that with the  
6       emission offsets that we have provided to the Bay  
7       Area District.

8               If this project, East Altamont, was  
9       evaluated under CEQA in exactly the same way that  
10      the CEC Staff evaluated the Tracy Peaker project,  
11      staff's conclusion would be that the mitigation  
12      we've provided is sufficient. Even without the  
13      agreement that we have with the San Joaquin Air  
14      District. Just based on the offsets provided to  
15      the Bay Area District.

16              The second thing table 1 shows is that  
17      in terms of the distance of the ERCs that we've  
18      provided as compared with those for the Tracy  
19      Peaker project, the average distance of our ERC  
20      sources is between 34 and 42 miles from the  
21      project site.

22              By comparison, the ERC sources for the  
23      Tracy Peaker project are generally between 46 and  
24      213 miles from the project site.

25              There was no discussion in the

1 Commission decision or even in my review of the  
2 final staff assessment that questioned whether  
3 those ERCs were too far away. Nor was there any  
4 question as to whether locations as far south as  
5 Bakersfield were upwind of the Tracy area.

6 And consequently, when I take a look at  
7 these two offset packages, my conclusion is that  
8 if the Commission found the offset package  
9 provided for the Tracy Peaker project to be  
10 acceptable, the package provided for East Altamont  
11 is substantially better.

12 And then on top of that we have added  
13 the San Joaquin Valley's mitigation agreement.

14 Q Ms. DeCarlo and Mr. Sarvey also asked  
15 you some questions regarding the agreement between  
16 the San Joaquin Valley District and the Tracy  
17 Peaker project, and I believe that you testified  
18 that the formulation of that agreement is  
19 different.

20 Could you please explain?

21 A Actually I think we've got two questions  
22 here. One had to do with the mitigation agreement  
23 for the Tesla project, and then the second had to  
24 do with the community benefits agreement for the  
25 Tracy project.

1           With respect to the Tesla project, it  
2           would be important to compare exhibit A2 from the  
3           East Altamont agreement with exhibit A2 from the  
4           Tesla agreement.

5           Now, in each case the exhibit is  
6           intended to document the San Joaquin District's  
7           opinion as to how much additional mitigation would  
8           be required.

9           The approaches taken are completely  
10          different in making that determination for the two  
11          projects.

12          In the case of the Tesla project the  
13          calculation is performed based on fractions of the  
14          year when wind blows in a particular direction;  
15          something referred to, and that we discussed  
16          earlier as a San Joaquin Valley contribution  
17          factor that is either 27 percent or 66 percent,  
18          depending on the pollutant. And then a  
19          calculation that ultimately reaches a conclusion  
20          that an additional 64 tons of mitigation is  
21          required. That 64 tons is just in ozone  
22          precursors.

23          The San Joaquin District concluded that  
24          no additional mitigation was required for PM10  
25          from the Tesla project.

1           And then to calculate what the  
2 mitigation payment should be, the District  
3 required a payment of \$15,000 per ton based on the  
4 District's judgment that they could achieve 64  
5 tons of reduction at a cost of \$15,000 per ton.

6           If you take a look at the same exhibit  
7 for the East Altamont agreement, you see that  
8 those percentages are not present. Part of the  
9 reason for that is that I was uncomfortable with  
10 not having enough basis to back up some of those  
11 numbers.

12           Also I had heard from Commission Staff  
13 that they were not comfortable with some of those  
14 numbers, either. Consequently, what we negotiated  
15 with the San Joaquin District, in fact, was an  
16 agreement based on what would have been required  
17 for this project had it been a couple of miles to  
18 the east, located within the boundaries of the San  
19 Joaquin District.

20           And so we evaluated the East Altamont  
21 project on that basis. And we came up with a  
22 value of 33 tons of additional ozone benefits,  
23 particularly NOx credits, that would had to have  
24 been required were the East Altamont project  
25 located in the San Joaquin District.

1           The San Joaquin District was  
2           uncomfortable with that approach, even though it  
3           was fully consistent with what the regulations  
4           would have required, and asked for an additional  
5           safety margin. That safety margin was a factor of  
6           two.

7           So, we doubled the amount and came up  
8           with 67 tons, 66.8 tons, of additional reductions.  
9           Just as was the case with Tesla, the San Joaquin  
10          District concluded that no additional mitigation  
11          for PM10 was required. And the 67 tons was  
12          multiplied by the same \$15,000 per ton value to  
13          come up with the mitigation payment, because the  
14          San Joaquin District's judgment was still that  
15          they could obtain those reductions at an average  
16          cost of \$15,000 per ton or better.

17          So, it's important, I think, for the  
18          Committee to understand the differences between  
19          the two, and also most dramatically, that they  
20          come to about the same answer. They come to about  
21          the same tons in both cases the San Joaquin  
22          District concluded that the PM10 mitigation  
23          provided for these two projects, although provided  
24          in a completely different way and evaluated in a  
25          completely different way, was still adequate for

1 the project.

2 And in each case they calculated  
3 additional mitigation requirements that were on  
4 the order of 66, 67 tons of NOx emissions.

5 Q And the GWF community programs, do you  
6 want to address that, as well?

7 A Sure. In terms of the community  
8 benefits agreement that's referenced in the  
9 Commission's decision on the GWF project, there  
10 have been many representations made about what it  
11 requires.

12 However, when I review this, out of the  
13 total of \$1.3 million in funding that's mentioned  
14 here, there are only \$400,000 out of that total  
15 that's specifically earmarked for emission  
16 reduction programs.

17 There's another \$50,000 for air quality  
18 monitoring station upgrade, which no matter how  
19 worthy that project is, will not reduce emissions  
20 by one pound.

21 There's an additional \$50,000 for  
22 landscaping which will not reduce emissions.  
23 There is an additional \$100,000 that is up to the  
24 discretion of the oversight committee, which may  
25 or may not be used to reduce emissions.



1           And then there is another \$600,000 for  
2     charitable giving programs -- excuse me, \$700,000  
3     charitable giving programs that have nothing to do  
4     with air quality.

5           So there's \$400,000 that's clearly  
6     earmarked -- \$400,000 is earmarked for clean  
7     diesel conversions, for trucks and buses, and a  
8     lawnmower electrification program.

9           My judgment is that the maximum benefit  
10    that you would see from those two programs  
11    combined will be less than ten tons per year of  
12    PM10.

13          And the reduction in NOx emissions may  
14    or may not be on that same order of magnitude,  
15    depending on what the NOx emission rates are from  
16    the trucks and buses that are going to be  
17    converted, and what the emission rates are from  
18    the new equipment.

19          Consequently, I don't think that there's  
20    any comparison at all. We're talking about  
21    approximately \$1 million for East Altamont that is  
22    going to very effective and very cost effective  
23    control programs to be implemented by the San  
24    Joaquin District. And we're talking about  
25    \$400,000 in funds under the community benefits

1 agreement for the Tracy Peaker project that are  
2 going to programs that may be beneficial, but are  
3 certainly not as cost effective and are not going  
4 to generate the kinds of reductions that we're  
5 seeking here.

6 MR. WHEATLAND: Thank you. That  
7 completes the redirect.

8 HEARING OFFICER WILLIAMS: Is there any  
9 recross?

10 MS. DeCARLO: Yes, staff has a couple  
11 questions.

12 RECROSS-EXAMINATION

13 BY MS. DeCARLO:

14 Q Do you know how many megawatts the  
15 proposed Tracy Peaker project was?

16 (Pause.)

17 BY MS. DeCARLO:

18 Q Well, let me make this easier. Would  
19 you be surprised if I told you 164 megawatts?

20 A No, I would not.

21 Q Okay. Was there any established  
22 transport factor for the ERCs used by the Tracy  
23 Peaker project?

24 A Established transport factor. Not as  
25 that term is used by the Commission Staff in their

1 analysis here.

2 Q Okay.

3 A There is a distance-based ratio that was  
4 applied by the San Joaquin District, which I also  
5 applied in my analysis -- excuse me, no, I did not  
6 apply that in my analysis because Commission Staff  
7 historically has not.

8 Q Your testimony is the staff historically  
9 does not use a distance ratio in determining the  
10 tonnage of ERCs?

11 A For purposes of CEQA evaluation, that's  
12 correct, that's my testimony.

13 Q Are there any intervening mountain  
14 ranges between the Tracy Peaker project and the  
15 proposed ERCs used for that project?

16 A No. I'm sorry, my answer was too quick  
17 and too glib.

18 Yes, in the case of the emission  
19 reduction credits provided from Devil's Dam, Elk  
20 Hills and South Coals Levee, there are significant  
21 terrain features, basically it's like the southern  
22 portion of the Diablo Range, that are between the  
23 project site and the location of the offsets.

24 Whether you call those mountains or not,  
25 I would leave to you. But there are terrain

1 features in between them.

2 Q In your opinion is the terrain on the  
3 same order of that encountered between the East  
4 Altamont Energy Center and the proposed ERCs?

5 A In terms of how the terrain influences  
6 dispersion, yes, I'd say they're comparable.

7 Q How about in terms of closeness to the  
8 proposed project?

9 A Oh, there's no comparison at all. The  
10 East Altamont ERCs are much much closer than the  
11 Tracy Peaker project ERCs.

12 Q No, I'm referencing the terrain.

13 A Oh, the terrain that I was referring to  
14 for the Tracy ERCs is much further away than the  
15 terrain for the East Altamont ERCs.

16 Q If San Joaquin Air District were  
17 evaluating a project pursuant to their District  
18 rules, could they allow for seasonality in  
19 calculating offsets?

20 A I'm not sure what you mean by could they  
21 allow seasonality.

22 Q Say the proposed emissions were  
23 projected to occur in only -- the problems were  
24 anticipated to be encountered only in a particular  
25 season. Could they take that into consideration

1 when determining the amount of offsets needed?

2 A They don't have any discretion. Their  
3 rules are quite precise. They allow for trades  
4 between certain seasons for certain pollutants.  
5 And they do not allow trades for other seasons or  
6 other pollutants. I don't recall exactly what the  
7 details are. Mr. Swaney might be able to answer  
8 that better.

9 But as I said, they don't have any  
10 discretion. The rules prescribe when you can do  
11 that kind of trading and when you cannot.

12 Q So the Tesla agreement, as written,  
13 wouldn't be allowed under their District rules, is  
14 that correct?

15 HEARING OFFICER WILLIAMS: Let the  
16 record reflect that Mr. Boyd has joined us.  
17 Counsel, would you repeat that question, also?

18 MS. DeCARLO: Sure.

19 BY MS. DeCARLO:

20 Q So the Tesla agreement, if Tesla were  
21 located within the District boundaries, wouldn't  
22 be allowed pursuant to District rules, is that  
23 correct? Because it accounts for a seasonality  
24 factor.

25 A I don't know if the offsets provided for

1 the Tesla project were evaluated in accordance  
2 with the San Joaquin District rules, they may or  
3 may not have approved the project. I've not done  
4 that calculation. It's a different calculation  
5 than the one that's embodied in the mitigation  
6 agreement.

7 Q Okay, thank you.

8 HEARING OFFICER WILLIAMS: Mr. Sarvey?

9 MR. SARVEY: Yeah.

10 RECROSS-EXAMINATION

11 BY MR. SARVEY:

12 Q We went through this before, but  
13 apparently we have to do it again. What basin are  
14 GWF's ERCs located in?

15 A The San Joaquin Valley air basin.

16 Q And as well as where the GWF Peaker  
17 Plant is located in?

18 A San Joaquin Valley air basin.

19 Q And what basin are the ERCs located that  
20 you're applying to this project?

21 A The Bay Area air basin.

22 Q And what basin is your facility  
23 geographically located in?

24 A It's within the boundaries of the Bay  
25 Area air basin; it's physically within the San

1       Joaquin Valley air basin.

2           Q     Now, in regard to that, isn't the GWF  
3       ERCs a pretty poor example to be presenting, since  
4       we're not even talking about the same air basin?  
5       Earlier in your testimony you talked about this  
6       bowl that we were dealing with, and all that  
7       regulatories -- I love when you guys talk like  
8       that -- but, in any event, isn't that a poor  
9       comparison? Wouldn't Tesla be a better comparison  
10      to this project?

11          A     No, actually I think it's an excellent  
12      comparison. And the reason is that when we're  
13      talking about the Bay Area and San Joaquin Valley  
14      air basins, we have two bowls. And as there has  
15      been a lot of discussion both in this proceeding  
16      and in other proceedings, water from one bowl  
17      tends to slosh into the other bowl.

18                And in particular, you have transport  
19      from the Bay Area into the San Joaquin Valley.  
20      And if you were asking me would I rather have, for  
21      projects located in northern San Joaquin County,  
22      projects located in eastern Alameda County, would  
23      I rather have offsets located within the Bay Area  
24      air basin, or would I rather have offsets located  
25      in the southern portion of the San Joaquin Valley,

1 my answer would be very clear.

2 You get a much better improvement to  
3 regional air quality if you get your offsets from  
4 the Bay Area because of that sloshing effect.  
5 Whereas, offsets provided in the southern end of  
6 the San Joaquin Valley air basin, although they're  
7 in the same bowl, the San Joaquin Valley air  
8 basin, that bowl is so big that you get very  
9 little benefit from reductions you get all the way  
10 in the southern end of the basin up here.

11 Now, there's still a good public policy  
12 reason for the San Joaquin District to allow that  
13 trade. Remember we were talking earlier about how  
14 bad air quality is in the Central Valley. In  
15 fact, air quality is worse the further south you  
16 go, because there's more time for the  
17 photochemical reactions to occur.

18 So there are some very good public  
19 policy reasons to encourage projects that are  
20 sited in the northern end of the Valley to get the  
21 emission reduction credits further south, because  
22 it will help reduce the overall basin air quality.

23 But if you're going to try and talk  
24 about air quality within the vicinity of a  
25 project, there's no question in my mind that



1 emission reduction credits that are within the Bay  
2 Area are going to give you more benefit in the  
3 northern part of the San Joaquin Valley than  
4 credits that come from the southern part of the  
5 San Joaquin Valley.

6 Q Using that reasoning, why are you  
7 opposed to the staff's local mitigation program?  
8 You seem to feel that that doesn't help the area.  
9 But from what you just told me, the more important  
10 mitigation would be located locally. And I'm  
11 having trouble understanding your reasoning. Can  
12 you explain that to me?

13 A No, I said more important mitigation  
14 would come upwind. And the reason for opposing  
15 the staff's proposals is because I think that this  
16 project has provided mitigation twice now, and I  
17 don't think additional mitigation is required. I  
18 think we have already mitigated sufficiently to  
19 get our impacts to a less than significant level.

20 Q So you don't feel that the local  
21 mitigation program is going to provide any type of  
22 benefit? You think that it's more properly  
23 located in the Bay Area, is that correct?

24 A What I said was I think that the  
25 mitigation we provided in the form of offsets to

1 the Bay Area were already sufficient once. And  
2 that the mitigation agreement that we signed with  
3 the San Joaquin District provides an extra measure  
4 of certainty.

5 And I think that together those two are  
6 sufficient.

7 Q And you refer to that sloshing of the  
8 bowl, correct? About the air impacts, sloshing  
9 over the bowl. So wouldn't that indicate that  
10 your ERCs in the Bay Area don't fully slosh over  
11 the edge of the bowl, and therefore do not fully  
12 mitigate your impacts in the San Joaquin County or  
13 San Joaquin Valley?

14 A The air patterns in California are such  
15 that all of the emissions in the Bay Area sooner  
16 or later are going to end up somewhere in the  
17 Central Valley. And they're either going to come  
18 through the Carquinez Strait, and either head  
19 north or west -- excuse me, north or east or  
20 south, depending on the time of year.

21 Or they're going to come over the  
22 Livermore Pass, through the Livermore Valley --  
23 over Altamont Pass, rather.

24 Or they're going to come through one of  
25 the other outlets. But they will either come east

1       into the Central Valley, or to a certain extent  
2       they will go south along the coast. The overall  
3       air pattern is such that they're all going  
4       somewhere.

5               And if your question is will 100 percent  
6       of the emissions in the Bay Area come into the San  
7       Joaquin Valley, clearly the answer is no.

8               Q     Okay. You testified earlier that the  
9       San Joaquin Valley Air Pollution Control District  
10      did an independent assessment in conjunction with  
11      their rules and regulations, is that correct?

12              A     I didn't say exactly that, but there are  
13      two things that I said that sounded like that,  
14      that are close to that.

15               One is I said that the San Joaquin  
16      District, when they submitted their comments to  
17      the Energy Commission in the fall of 2001,  
18      compared the East Altamont project with what they  
19      believed would be required if the project was  
20      located in the San Joaquin District.

21               And then, second, indicated that in  
22      exhibit A2 of the mitigation agreement for East  
23      Altamont, the San Joaquin District took a look  
24      specifically at the offset requirements and saw  
25      how they would be applied to the East Altamont

1 project, if the project was located within the San  
2 Joaquin Valley's jurisdiction.

3 Q Later on you testified you were  
4 uncomfortable with the numbers related to  
5 transport and you said San Joaquin -- and you  
6 indicated that you had some influence over the  
7 mitigation agreement.

8 Was this mitigation agreement developed  
9 by you or by San Joaquin County with an  
10 independent -- or San Joaquin Valley Air Pollution  
11 Control District with an independent assessment,  
12 or how did this mitigation agreement come about?

13 MR. WHEATLAND: Can we go off the record  
14 for a moment?

15 HEARING OFFICER WILLIAMS: Off the  
16 record.

17 (Off the record.)

18 MR. RUBENSTEIN: I'm sorry, Mr. Sarvey,  
19 can you ask your question again, please.

20 MR. SARVEY: I'm finished, thank you,  
21 Mr. Rubenstein.

22 MR. RUBENSTEIN: Okay.

23 MR. WHEATLAND: I have no further  
24 redirect.

25 HEARING OFFICER WILLIAMS: Okay. Then I

1 think we're ready to proceed with the staff's  
2 presentation.

3 MR. WHEATLAND: I'd like to move  
4 exhibits 4G-1 and 4G-2 into the record.

5 HEARING OFFICER WILLIAMS: Any  
6 objection?

7 MS. DeCARLO: No objection.

8 HEARING OFFICER WILLIAMS: So moved.  
9 And, Mr. Sarvey, we've got N through O bookmarked  
10 for the mitigation agreements that you were going  
11 to put in. So at the point that you started  
12 identifying them, you can start with M.

13 MR. SARVEY: Okay.

14 HEARING OFFICER WILLIAMS: Okay. So  
15 we're ready for staff.

16 MS. DeCARLO: Okay, great. Staff's  
17 witnesses for air quality are Tuan Ngo, Mike  
18 Ringer and Matthew Layton. And they all need to  
19 be sworn in.

20 HEARING OFFICER WILLIAMS: Would you  
21 swear them, please.  
22 Whereupon,

23 TUAN NGO, MICHAEL RINGER and MATTHEW LAYTON  
24 were called as witnesses herein, and after first  
25 having been duly sworn, were examined and

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MS. DeCARLO:

4 Q Mr. Ngo, can you please state your name  
5 for the record?

6 MR. NGO: My name is Tuan Ngo, spelled  
7 T-u-a-n, last name N-g-o.

8 MS. DeCARLO: And is a statement of your  
9 qualifications attached to this testimony?

10 MR. NGO: Yes, it is.

11 MS. DeCARLO: What is your job title?

12 MR. NGO: My job title is mechanical  
13 engineer.

14 MS. DeCARLO: Can you briefly state your  
15 education and experience as it pertains to air  
16 quality?

17 MR. NGO: I'm graduate from Davis with a  
18 bachelor degree in chemical engineering. And --  
19 professional engineering with the State of  
20 California. I have three years working in Kern  
21 County as a permitting engineer. I have about, I  
22 think about nine years working at Air Resources  
23 Board. And I have been with the California Energy  
24 Commission in this capacity since 1992.

25 MS. DeCARLO: And did you prepare or

1 assist in preparing the testimony entitled air  
2 quality in the final staff assessment marked as  
3 exhibit 1, and errata marked as exhibit 1C?

4 MR. NGO: I did.

5 MS. DeCARLO: And do the opinions  
6 contained in your testimony represent your best  
7 professional judgment?

8 MR. NGO: It is.

9 MS. DeCARLO: Mr. Ringer, can you please  
10 state your name for the record?

11 MR. RINGER: Mike Ringer, R-i-n-g-e-r.

12 MS. DeCARLO: What is your job title?

13 MR. RINGER: I'm a Planner III.

14 MS. DeCARLO: Could you briefly state  
15 your education and experience as it pertains to  
16 air quality?

17 MR. RINGER: I've been with the  
18 California Energy Commission since 1977. I  
19 currently supervise the health and air unit. And  
20 I've been doing public health analyses, along with  
21 waste management, since 1987.

22 MS. DeCARLO: And did you assist in  
23 preparing the testimony entitled air quality in  
24 the final staff assessment marked as exhibit 1 and  
25 errata marked as exhibit 1C?

1                   MR. RINGER: I helped review that  
2 testimony.

3                   MS. DeCARLO: Mr. Layton, can you please  
4 state your name for the record.

5                   MR. LAYTON: My name's Matthew Layton,  
6 L-a-y-t-o-n.

7                   MS. DeCARLO: What is your job title?

8                   MR. LAYTON: Mechanical Engineer with  
9 the California Energy Commission.

10                  MS. DeCARLO: Could you briefly state  
11 your education and experience as it pertains to  
12 air quality?

13                  MR. LAYTON: Yes, I have an  
14 undergraduate degree in mechanical engineering;  
15 and I've been working at the California Energy  
16 Commission since 1987, working on air quality  
17 issues.

18                  MS. DeCARLO: Did you assist in  
19 preparing the testimony entitled air quality  
20 contained in the final staff assessment marked as  
21 exhibit 1, and errata marked as exhibit 1C?

22                  MR. LAYTON: Yes, I did.

23                  MS. DeCARLO: Mr. Ngo, do you have any  
24 changes to your testimony?

25                  MR. NGO: No.



1 MS. DeCARLO: What were your findings  
2 with regard to the project's potential for impacts  
3 to air quality?

4 MR. NGO: What we find out was that the  
5 staff had to perform an air quality analysis based  
6 on California Environmental Quality Act. And we  
7 find out that the project have a potential to  
8 cause significant impact to the area for the  
9 following criteria air contaminant.

10 The first one is the one-hour state and  
11 federal ozone standard; the eight-hour federal  
12 ozone standard; the 24-hour PM10 state; and then  
13 the 24-hour federal PM2.5 standard.

14 MS. DeCARLO: And are these impacts  
15 mitigated by the applicant's purchase of emission  
16 reduction credits from the Bay Area Air Quality  
17 Management District?

18 MR. NGO: In my opinion, no. First of  
19 all, the reason why we do that because we look at  
20 the ambient air quality data in the area. And  
21 according to the AFC, the applicant had provided  
22 some analysis in the AFC that showing that the  
23 Livermore air quality data would be a  
24 representative of the local condition.

25 And based on the trend in Livermore and

1 in Tracy, in the case where we do have ambient  
2 concentration data, we see that the project will  
3 cause an impact.

4 Now, when we first look at the emission  
5 reduction credit provided by the applicant in the  
6 AFC, there was a paper from the Air Resources  
7 Board, a study done by Air Resources Board. What  
8 they did is they want to find out what the  
9 transport of emission from the Bay Area to the San  
10 Joaquin Valley, in particular northern San Joaquin  
11 Valley.

12 What they did was they turn off, they  
13 sort of like they turn off all -- imagine like a  
14 spigot, and then you turn off the spigot of all  
15 the emission from the Sacramento area and the Bay  
16 Area. And they find out that 27 percent of the  
17 emission from the Bay Area impact the northern San  
18 Joaquin County Valley.

19 So, based on that analysis we sort of  
20 like, we kind of realize that maybe kind of  
21 punitive to the applicant to be penalized with so  
22 much emission.

23 So what we did, additional thing we have  
24 to do when we look at the ambient concentration  
25 data from the upwind data, from the upwind area,

1 and we did look at quite a few, but what we did  
2 find out was that the emission from Pittsburg --  
3 I'm sorry, not the emission, the ambient  
4 concentration or the ambient condition from  
5 Antioch and Pittsburg area and Livermore and  
6 Tracy, in particular, this one for the ozone,  
7 would be having pretty much like they are in the  
8 same air basin.

9 In other words, they peak and then  
10 valley at the same day. And then during that time  
11 period, during the two year of ozone season we see  
12 there was a few day under very stagnant condition.  
13 When I'm saying stagnant, I mean the wind were  
14 very low, and it hot.

15 So what happened was that the  
16 concentration of ozone in Livermore is a little  
17 bit higher than Tracy. However, on the average  
18 the Tracy ozone concentration is about 10 percent  
19 higher than Livermore -- I'm sorry, 10 to 15  
20 percent higher than Livermore, and then the  
21 concentration of ozone from Livermore is about 10  
22 to 15 percent higher than the one in Pittsburg and  
23 Antioch area.

24 Using that approach what we did were we  
25 readjust the effectiveness of the emission

1 reduction credits, so instead of using the  
2 umbrella 27 percent effectiveness from the Air  
3 Resources Board study, we actually give them even  
4 more than that. We give them an estimate of 70  
5 percent efficiency, or 70 percent effective in  
6 mitigation downwind emission from the project.

7 And even with those we still find out  
8 the project still don't have enough to mitigate  
9 the impact.

10 MS. DeCARLO: If the impacts aren't  
11 fully mitigated by the BAAQMD ERCs alone, why did  
12 the Bay Area issue a final determination of  
13 compliance?

14 MR. NGO: We believe the Bay Area Air  
15 Quality Management District Staff evaluate the  
16 project to comply with their own rule and  
17 regulation.

18 MS. DeCARLO: And is it your opinion  
19 that the Bay Area didn't perform their own CEQA  
20 analysis of the impacts of the proposed project?

21 MR. NGO: No.

22 MS. DeCARLO: No, they did not perform?

23 MR. NGO: No, they did not perform the  
24 CEQA analysis. I need to add one more thing. The  
25 Bay Area, the basis of their rule, the basis of

1 the District rule in general were based in the  
2 state implementation plan, which gear toward  
3 attainment of the federal standard, not with  
4 state.

5 So, if I complied with their rule I'll  
6 be consistent with the state implementation plan.  
7 They are working to get the attainment to address  
8 the problem with the federal standard, not with  
9 the state standard.

10 MS. DeCARLO: The applicant relies in  
11 part on the cumulative air quality analysis  
12 submitted in the Tracy Peaker Plant project. Do  
13 you know if this analysis modeled the anticipated  
14 business parks, new residential communities and  
15 associated mobile sources?

16 MR. NGO: In the -- the applicant has  
17 cite a few reference to the cumulative impact  
18 analysis. But according to the latest analysis, a  
19 cumulative impact analysis were performed for the  
20 Tesla project. The emission from the community  
21 project for community development like Mountain  
22 House, Tracy Hill and South Schulte project, the  
23 emission from there only included daily  
24 residential activity emission. But it does not  
25 include the mobile source emission from the

1 development.

2 And therefore, the staff analysis, under  
3 cumulative impact analysis was sort of like done  
4 over, just over a one-day period. So we didn't  
5 have a time to provide all that input model. But  
6 actually all the input model from the cumulative  
7 impact analysis that staff have performed and  
8 provided in the errata, based on the Tesla, the  
9 latest cumulative impact for the Tesla project  
10 with one improvement. We add in mobile source  
11 emission from Mountain House to the cumulative  
12 impact analysis.

13 So, to summarize, the Tesla cumulative  
14 impact analysis are almost identical with what we  
15 have, what staff had used with one exception,  
16 mobile source for Mountain House community had  
17 been added into the model.

18 MS. DeCARLO: And have you reviewed the  
19 EIR submitted for the Tracy Hills proposed  
20 project, the South Schulte plan, and the Mountain  
21 House new community?

22 MR. NGO: The only thing -- I did not  
23 review the EIR for the Tracy Hill and South  
24 Schulte, but I did look at the emission value for  
25 those two project. And I did review the EIR for

1 the Mountain House community development.

2 MS. DeCARLO: And what was the  
3 conclusion reached in that EIR for potential  
4 cumulative air impacts?

5 MR. NGO: The Mountain House  
6 environmental impact report conclude that among  
7 other impacts the development of a new town would  
8 increase emission of NOx, VOC, the volatile  
9 organic compound, sulfur oxide and PM10. All of  
10 these will contribute to the existing violation of  
11 ozone and PM10 standard in the San Joaquin Valley  
12 and the San Francisco air basin.

13 And thus, will interfere with the  
14 progress toward attainment of the above air  
15 quality standard.

16 And the San Joaquin County Board have  
17 approved a development of the new town with  
18 overriding consideration of unmitigated  
19 significant air quality impacts.

20 MS. DeCARLO: Have you read the  
21 agreement reached between the applicant and the  
22 San Joaquin Valley Air Pollution Control District?

23 MR. NGO: Yes, I did.

24 MS. DeCARLO: Do you believe this  
25 agreement is sufficient to mitigate the potential

1 impacts you've identified?

2 MR. NGO: No. We didn't believe it --  
3 the bigger problem we have with the agreement that  
4 the applicant signed with the District, it's not  
5 specific enough in specifying the location of  
6 emission reduction, the total tonnage of emission  
7 reduction, nor the timeframe of implementation.

8 In addition to that, there are no  
9 measure to verify the performance of the  
10 settlement.

11 MS. DeCARLO: Can you please explain  
12 your proposal for mitigating the potential impact  
13 you've identified?

14 MR. NGO: It's pretty much two element  
15 and one optional item. One of them is a wood  
16 stove program that was mainly aimed to reduce  
17 emission from wood stove for PM10 emission  
18 reduction to mitigate the project PM10 and PM2.5  
19 impact.

20 The other thing was the --

21 COMMISSIONER PERNELL: Excuse me, when  
22 you say wood stove, are you also talking about  
23 fireplaces?

24 MR. NGO: Yes.

25 COMMISSIONER PERNELL: So you are



1 talking about fireplaces?

2 MR. NGO: Fireplace and wood stove.

3 What we recommend, I wanted to add to the  
4 Commissioner, what we recommend was if you have an  
5 old wood stove or fireplace, what you could do,  
6 you could buy a new one that is certified by EPA  
7 for phase two compliance.

8 Because phase two compliance wood stove  
9 burn less wood, and would be cleaner in term of  
10 particulate emission. Then when you replace them,  
11 you will gain what we call emission reduction for  
12 PM10. And those emission reduction will be right  
13 here in the local community with aim to  
14 specifically mitigate the local impact from the  
15 project.

16 COMMISSIONER PERNELL: I misunderstood.  
17 I thought you were eliminating fireplaces and wood  
18 stoves --

19 MR. NGO: No, we not.

20 COMMISSIONER PERNELL: -- as a  
21 recommendation.

22 MR. NGO: We allow them to -- no, we not  
23 eliminating. We allow them to replace --

24 COMMISSIONER PERNELL: A more efficient  
25 wood stove and fireplace?

1           MR. NGO: Right. Cleaner, too. And the  
2 second element of the proposal of the staff  
3 recommendation was to modify, replace  
4 implementation of some new engine program that  
5 already existing in the San Joaquin Valley and  
6 also administered by the San Joaquin Valley Air  
7 Pollution Control District.

8           In this program engine participant will  
9 receive some money so they can get to a cleaner  
10 engine, and therefore they will get some NOx and  
11 PM10 emission reduction credit for the program.

12           And the option that staff allow also was  
13 to just say if the applicant don't want to do any  
14 of this stuff, any of this mitigation that we are  
15 recommending, then we will accept emission  
16 reduction credits that actual acquire in the local  
17 area to mitigate the project emission impacts.

18           MS. DeCARLO: Now, the applicant claims  
19 that ozone levels at the project site are expected  
20 to be comparable to or less than the levels found  
21 in Tracy. Do you agree with this assessment?

22           MR. NGO: I do not agree with this.  
23 Based on we look at about five year worth of data,  
24 but we have the two year data that more  
25 reasonable, most recent year data on ozone.

1           And, Commissioner, we find that the  
2           emission or the ozone level in Livermore and  
3           Tracy, in Tracy was about 10, 15 percent higher  
4           than Livermore during only a few days of the year  
5           when there are stagnant condition.

6           And the whole reason why Livermore have  
7           higher emission on those day, if you could  
8           imagine, again using the word from Mr. Rubenstein,  
9           you had a bowl. What happen, you have a mountain  
10          range here. When there was air transport from the  
11          Bay Area all the emission coming down, and it  
12          couldn't get over the Altamont Pass. And it was  
13          sitting there and cooking.

14          And those are the day, only few years of  
15          the day when you see higher ozone concentration  
16          data in Livermore than it is in Tracy. Otherwise  
17          you will see between Livermore and Tracy you will  
18          see a 10 to 15 percent on the average ozone --  
19          Tracy ozone about 10, 15 percent higher than it is  
20          in Livermore.

21          MS. DeCARLO: The applicant also claims  
22          that the air quality in Livermore is not  
23          representative of the air quality at the project  
24          site. Do you agree with this statement?

25          MR. NGO: I mention earlier when we

1 first received the AFC and we look at the data  
2 adequacy, we have a problem with -- we look at the  
3 analysis of the ambient air concentration data.  
4 And the applicant have provide us with analysis,  
5 with their own analysis that the Livermore  
6 concentration, ambient concentration, would be  
7 representative of the condition at the site.

8 We look -- excuse me -- and so we look  
9 at the only -- we have a little bit of problem at  
10 first when we look at the Livermore concentration,  
11 ambient concentration data. And the nearest  
12 ambient monitor station in the San Joaquin Valley  
13 would be in Stockton.

14 And we look at the -- again, we look at  
15 the ambient concentration data in Stockton and  
16 Livermore and Tracy. The one from Stockton does  
17 not respond well as it is with Livermore and  
18 Tracy. So Stockton area is not a representative  
19 of the site.

20 And the other option that we have which  
21 have to hold the project, -- what we have to  
22 recommend that applicant have to do what we call a  
23 preconstruction monitor program. And if we  
24 recommend that, that mean the project will be  
25 delayed by two to three years.

1           So, when we are using all this one with  
2           again with the applicant analysis, our own  
3           analysis, and we're trying to facilitate licensing  
4           of this project, so we go ahead and accept the  
5           Livermore station as representative of the site.

6           MS. DeCARLO: The applicant argues that  
7           ozone and PM10 are regional pollutants, and  
8           therefore the ERCs provided are sufficient to  
9           address the regional impact. Do you agree with  
10          these statements?

11          MR. NGO: Can you repeat the question  
12          again?

13          MS. DeCARLO: Sure. The applicant  
14          argues that ozone and PM10 are regional  
15          pollutants, therefore the ERCs provided are  
16          sufficient to address the regional impact. Do you  
17          agree with this?

18          MR. NGO: Not really. First of all,  
19          general statement, regional problem caused by  
20          local air emission. So we need to address local  
21          air emission before we can talk about regional  
22          problem.

23          We believe ozone and PM10 are both  
24          localized and regional. I try not to bore you,  
25          but I need to use the overhead projector. We want

1 to just go over a little bit of chemistry --

2 HEARING OFFICER WILLIAMS: Okay.

3 MR. WHEATLAND: Before we do, is this  
4 part of the direct -- prefiled direct testimony,  
5 this chemistry?

6 MR. NGO: It's a general statement.

7 MR. WHEATLAND: Well, my question is, is  
8 it part of the prefiled written direct testimony,  
9 because the staff has had multiple opportunities  
10 to file written testimony.

11 I'm going to object to additional direct  
12 testimony --

13 MS. DeCARLO: It's just an effort to  
14 explain the testimony in a little more clearer  
15 fashion for the Committee to understand.

16 MR. WHEATLAND: I'm going to object to  
17 it. There's no direct testimony at this late  
18 hour.

19 MR. NGO: Sorry, I'm back.  
20 Commissioner, I would like to say this. The  
21 applicant already saying over in their own  
22 testimony that ozone and PM10 are local and they  
23 have photochemical process in the air and  
24 therefore we need to look at the chemistry.

25 And what I want to do -- well, maybe I

1 don't need this -- let me try to make sure it  
2 brief and concise to the point, so we -- to say  
3 about it.

4 First of all, regional problem caused by  
5 local emissions, we need to address local  
6 emission. Second of all, ozone formation mainly  
7 is a product of photolysis of NO<sub>2</sub> to NO, with the  
8 help from ultraviolet light.

9 Think of it this way, ozone formation --  
10 you need to have some fuel, NO<sub>2</sub> is the fuel to  
11 provide that reaction.

12 What about the hydrocarbon? What  
13 hydrocarbon does is it provide a recycling of the  
14 NO to NO<sub>2</sub> to recycle that NO<sub>2</sub> to NO again, and  
15 then again will produce ozone.

16 Ozone formation will come to a  
17 termination during two condition. One, it will  
18 form nitric acid with the HNO<sub>3</sub>, or it will form  
19 with radical acetylcarbonate radical in the  
20 atmosphere to form what we call  
21 peroxyacetylnitrate, or PAN for short.

22 So, under with -- when these two  
23 component, when the nitric acid and PAN will form,  
24 ozone terminate.

25 Nitric acid, let me talk about PAN

1 first. PAN is particulate, and after it form it  
2 can be carried far far away, hundred of mile,  
3 hundred kilometer away. And what the problem with  
4 this PAN was that under certain condition it will  
5 break down. It will break down.

6 And what it does is it give out NO2 to  
7 start a new cycle again. So think of PAN as some  
8 kind of temporary reservoir that can carry  
9 downwind. And that what we call the problem with  
10 ozone by both local and regional. Because not  
11 only it produce local ozone, it will carry further  
12 downwind to produce even more ozone downwind.

13 What happen with nitric acid, the nitric  
14 acid will react -- nitric acid will react with  
15 ammonia to form ammonium nitrate. Okay. Now,  
16 look at this way, nitric acid will readily, by  
17 itself, readily attach to any surface, and most  
18 readily will be to do that it tend to do is to  
19 deposit into the ground in term of nitrogen  
20 deposit, or acid rain, or dry acid deposition.

21 If you think of it the way -- if you  
22 think of the layer of nitric acid of say a  
23 kilometer, the half life for it to settle is 30  
24 hours. But if you have nitric acid react with  
25 ammonia, that same layer of ammonium nitrate will



1 be an order of magnitude higher half life than it  
2 is for just nitric acid.

3 So because the particulate with it  
4 ammonium nitrate will be suspended in the air, it  
5 have a chance to carry much much more further  
6 downwind because of regional PM10. But before it  
7 does that, it have the potential to cause local  
8 PM10 impact.

9 What about SO2? I try not to go into  
10 too much detail here, but what we are saying, that  
11 SO2 will also be oxidized in the atmosphere into  
12 hydrosulfuric acid. And this thing will be  
13 readily attached to ammonia to form ammonium  
14 sulfate with also a particulate.

15 So, again, we are only talking about  
16 secondary PM10 and fine particulate and ozone. To  
17 summarize what I try to say was the impact of this  
18 two pollutant are both localized and regional. So  
19 we have to look at both.

20 MS. DeCARLO: The applicant also claims  
21 that the project area, quote, "probably can be  
22 characterized as mostly ammonia rich" end quote,  
23 and therefore, quote, "ammonia emissions will not  
24 contribute significantly to particulate nitrate  
25 formation or deposition in the area."

1 Do you agree with this statement?

2 MR. NGO: First of all, I need some  
3 water -- excuse me.

4 HEARING OFFICER WILLIAMS: Mr. Ngo, I'm  
5 going to ask you on one of the breaks to check  
6 with the court reporter to see if she needs any  
7 help on some of the spelling for the chemical  
8 terms that you are using.

9 (Laughter.)

10 MR. NGO: I will.

11 First of all, to determine an area where  
12 it ammonia rich, you have to know is there ammonia  
13 in the area. We don't have that data. We don't  
14 have any data anywhere except in a small part of  
15 South Coast.

16 And it just like you look at somebody  
17 the way, how much he spend, you say he rich or he  
18 poor. That really not tell the picture. That's  
19 what I'm trying to say.

20 And then in order to determine whether  
21 the area is ammonia rich, you need a lot more than  
22 just ammonia. You need to have nitric acid in the  
23 gaseous, in the solid form and the liquid form or  
24 aerosol form, liquid aerosol.

25 You also need hydrosulfuric acid also in

1 solid, liquid and gaseous. And then you also need  
2 the particulate nitrate and sulfate concentration  
3 also in the gas form and particulate form, and  
4 relative humidity and temperature even before you  
5 be able to say whether the area is ammonia rich or  
6 ammonia poor.

7 The applicant analysis say that the  
8 project area probably can be character at mostly  
9 ammonia rich. Well, it mean is they don't have  
10 any of the data to make that statement, to know  
11 the truth, to know whether that area is what.

12 Regardless of whether there ammonia rich  
13 or poor, when there is a research done by  
14 Professor Watson in 1998 for the Northern Front  
15 Range Air Quality Study in Colorado, being that  
16 research Professor Watson saying that show that  
17 the emission -- I'm sorry, first of all, the first  
18 conclusion was that the area was ammonia rich  
19 based on all these concentration data.

20 And he also show that a reduction of 50  
21 percent of ammonia will reduce 15 percent of  
22 PM2.5, of fine particulates.

23 In another work, what I'm trying to say  
24 was regardless of whether the ammonia rich or  
25 ammonia poor, the project ammonia emission have a

1 potential to cause a secondary PM fine particulate  
2 impact.

3 The SCR supply, I talk to -- I  
4 telephoned the SCR supply earlier in the process.  
5 And then I ask him about whether the project can  
6 be performed -- can be maintained at 2 ppm and 5  
7 ppm ammonia -- I'm sorry, 2 ppm for NOx and 5 ppm  
8 ammonia slip, because we were concerned about the  
9 EPA concern at the time. And he said that would  
10 be no problem.

11 So the question is does the technology  
12 feasible? It is feasible. The applicant have  
13 told us I think in one of the workshops, maybe  
14 more than one of the workshop, that saying that  
15 the SCR system were actually designed for 5 ppm.  
16 The reason why they want to maintain at 10 ppm  
17 because they don't have to replace the ammonia add  
18 earlier. In other words they can keep the SCR,  
19 the catalyst in the SCR system for an additional  
20 three to five years.

21 So right now it become a cost effective  
22 where it is cheaper to do certain thing. And we  
23 also notice that both ARB and EPA have recommend  
24 that it's 5 ppm would be the ammonia slip level.

25 And then all the recent project, 2 ppm

1 NOx and 5 ppm would be the Three Mountain project  
2 and some other project also have the 5 ppm that  
3 are recently licensing would be the Contra Costa,  
4 the -- oh, I hit a blank now, but there was a few  
5 of them, I'm sorry.

6 MS. DeCARLO: Can you please explain why  
7 staff believes SO2 emission offsets are necessary?

8 MR. NGO: Again, SO2 and ammonia play an  
9 important part in the formation of PM2.5. I  
10 mention earlier SO2 will be oxidized by hydro --  
11 radical in the atmosphere. And it will form  
12 hydrogen sulfate.

13 And under certain condition it will form  
14 into hydrosulfuric acid which will be readily  
15 react with ammonia to form ammonium sulfate within  
16 the particulate.

17 And therefore, and because the area  
18 already have a lot of problem with PM10 and PM2.5,  
19 we recommend that SO2 be mitigated.

20 MS. DeCARLO: Can you please explain why  
21 staff feels the construction mitigation  
22 requirements are necessary?

23 MR. NGO: Can I use this thing now? I'm  
24 sorry, this one need two graph under cumulative  
25 impact analysis that staff have performed. I

1 mentioned about it earlier. And it were included  
2 in the errata. I want just to show it, just to  
3 show the location, the general location.

4 MS. DeCARLO: These items were included  
5 in the second set of errata.

6 HEARING OFFICER WILLIAMS: What exhibit  
7 is it?

8 MS. DeCARLO: Exhibit 1C.

9 HEARING OFFICER WILLIAMS: 1C.

10 COMMISSIONER PERNELL: Mr. Harris.

11 (Laughter.)

12 COMMISSIONER PERNELL: Thank you.

13 MR. NGO: Commissioner, what we see here  
14 is the plant concentration of PM10 emission for  
15 the project, cumulative impact analysis. Again,  
16 as I mentioned earlier, this analysis was done  
17 using the Tesla cumulative impact analysis. And  
18 this one, the only difference between this  
19 analysis and the Tesla project was that it include  
20 mobile source emission from the Mountain House  
21 community.

22 What we see here is that we run two  
23 scenarios. The first scenario deal with the  
24 emissions from the facility and other facility  
25 plus the emission, the construction emissions from

1 the Mountain House community.

2 And what we see here is that the project  
3 under cumulative basis will add to about -- I  
4 forgot to bring my glasses, I've got to the age  
5 where I need glasses -- anyway, --

6 HEARING OFFICER WILLIAMS: Why don't you  
7 retrieve your glasses?

8 MR. WHEATLAND: While we're doing this  
9 could we have a copy of this exhibit, please?

10 MS. DeCARLO: Do you not have a copy of  
11 the 1C?

12 MR. WHEATLAND: Yeah, is this 1C?

13 MS. DeCARLO: I don't have any extra  
14 copies.

15 PRESIDING MEMBER KEESE: May I ask one  
16 question. Is this information that would have  
17 been in the development of the PDOC?

18 MS. DeCARLO: I don't believe in the Bay  
19 Area Air Quality Management District PDOC --

20 PRESIDING MEMBER KEESE: So the Bay Area  
21 would not have taken this under consideration in  
22 their activities?

23 MS. DeCARLO: I can't confirm that.  
24 Perhaps, Tuan, can you speak about that? The Bay  
25 Area will be up here shortly.

1           MR. NGO: I'm sorry, I didn't hear the  
2 question.

3           MS. DeCARLO: Is this analysis something  
4 that the Bay Area would have done in their PDOC or  
5 FDOC?

6           MR. NGO: No.

7           PRESIDING MEMBER KEESE: Thank you.

8           MR. NGO: The Bay Area have not done  
9 this.

10          PRESIDING MEMBER KEESE: No. So, the  
11 question is would they have. I understand that  
12 you added Mountain House.

13          MR. NGO: Right.

14          PRESIDING MEMBER KEESE: Which is  
15 something the Bay Area didn't do. So you've  
16 giving us a different database than the Bay Area  
17 did, if the Bay Area would have used this? So  
18 that's my question. You're asking us, in a way  
19 here, I think by the time we get done, to ignore  
20 the finding that the Bay Area made as to adequacy  
21 of offsets, and ignore the finding that San  
22 Joaquin made as to the adequacy of offsets, and  
23 accept your analysis of the adequacy of offsets.

24               I'm simplifying greatly here. And so  
25 I'm seeing the advantage of having building



1 standards that only change every three years.

2 (Laughter.)

3 PRESIDING MEMBER KEESE: It looks like,  
4 you know, one standard for Tracy Peaker, one  
5 standard for Tesla, one standard for this. My  
6 question is, the data that you're using, would  
7 that have been used by the Bay Area. And you said  
8 no.

9 So I guess we'll hear from the Bay Area  
10 later. Okay.

11 MR. NGO: Commissioner, we wouldn't ask  
12 you to forget everything but the Bay Area nor the  
13 San Joaquin County District have provided.

14 PRESIDING MEMBER KEESE: Well, you're  
15 probably going to have to ask us that at the end.

16 MR. NGO: But they have a different --  
17 I'm sorry, they have a different objective than we  
18 are. And therefore, this will be what we are  
19 providing you is additional information for your  
20 consideration.

21 PRESIDING MEMBER KEESE: Okay.

22 MR. NGO: That's what I was trying to  
23 do.

24 Anyway, we run two scenario. The first  
25 scenario was the project's normal operation in

1 combination with every other project that are  
2 nearby, including the Mountain House, the Tesla,  
3 the biomass facility, the Tracy Peaker, the Owens  
4 Brockway Glass Plant, and one more -- and then the  
5 South Schulte development, the Tracy Hill  
6 development. And what we see was that the project  
7 would cause about 32 mcg/cubic meter of PM10.

8 Now, we run the second scenario; this  
9 time no construction emission from the Mountain  
10 House community was included. And we are looking  
11 at, we see an impact from the project in  
12 combination with other project would be about 7.9  
13 mcg/cubic meter for PM10.

14 I do not have a use for the projector  
15 any more.

16 The other I want to talk about was the  
17 applicant own air quality impact analysis for the  
18 project provided in the AFC also indicate that the  
19 project will cause about 78.2 mcg/cubic meter for  
20 construction period for PM10. And it will  
21 contribute 355 mcg/cubic meter for NO2.

22 Adding on top of the problem of just for  
23 NO2, when we add the background, when we add the  
24 project impact to the background, the project,  
25 according to the applicant own analysis, the

1 project construction will cause a new violation of  
2 the NO2 standard.

3 And then the project will surely, at 78  
4 mcg/cubic meter, exceed the -- even by itself,  
5 exceed the standard of -- the state standard for  
6 PM10. And therefore, in their own analysis, it is  
7 significant impact. And therefore, what we are  
8 doing, we are trying to inject construction  
9 condition so that we can reduce that impact to a  
10 level of less than significant.

11 That's all I have to say.

12 MS. DeCARLO: Mr. Ringer, on page 2.1-13  
13 the applicant states that in the Morro Bay case  
14 staff found that PM10 impacts were higher than for  
15 the East Altamont Energy Center, but that they  
16 were insignificant. Is this a correct statement  
17 of the Morro Bay findings?

18 MR. RINGER: Yes, and I'm concerned that  
19 the Commissioners might get an idea that we take a  
20 look at different things, different impacts,  
21 different projects, look at them in a completely  
22 different light.

23 And while that's true to the extent that  
24 we need to look at the context of one project  
25 versus another, the impacts. In Morro Bay there

1 was a very high impact that did happen to occur in  
2 a specific localized area.

3 There's a 500-foot rock, Morro Rock,  
4 where the impacts on a 24-hour PM10 basis happened  
5 to be. In that particular case the mitigation  
6 that was offered for the project was right at the  
7 same site.

8 The local intervenors had a problem with  
9 the fact that there were some different modeled  
10 impacts within the area of the town that were  
11 higher for the new facility than the old facility.  
12 And that caused them a lot of concern.

13 So, in order -- we had discounted the 24  
14 micrograms because it was at a particular area  
15 that was inaccessible to the public. And instead  
16 we looked at the impacts that would be in the  
17 town. And found that the difference between the  
18 new and the old facility were very slight  
19 differences.

20 And because of the different background  
21 in air quality in Morro Bay versus the San Joaquin  
22 Valley, we determined that those impacts were not  
23 significant.

24 So I wanted to make sure that the  
25 Commissioners did not get the wrong idea that we

1 just willy-nilly decided that 24 micrograms was  
2 not a significant impact.

3 PRESIDING MEMBER KEESE: It was just a  
4 comment about the difficulty of keeping this  
5 straight when we're -- you know, we're handling  
6 this case, and it's not -- I'm not only staff, but  
7 on all levels here we're being referred to other  
8 cases that Mr. Pernell and I are not on.

9 I mean there was one reference earlier  
10 to one that we are on. And we can relate very  
11 easily to Potrero, I think. But we're not on  
12 Tesla, we're not on -- unless you are, Robert.

13 (Laughter.)

14 COMMISSIONER PERNELL: I'm not  
15 volunteering anything.

16 (Laughter.)

17 MR. SARVEY: He's had enough of Tracy.

18 BY MS. DeCARLO:

19 Q On that same page the applicant quotes  
20 the staff's opening brief with an introduction  
21 stating, quote, "Staff dismissed the idea of using  
22 air quality models to evaluate the benefits of the  
23 air quality mitigation measures." End quote.

24 Can you please explain the context of  
25 the modeling done in the Morro Bay case?

1           MR. RINGER: Once again, the intervenors  
2           were concerned about the difference in impacts  
3           between the facility that was being shut down and  
4           the new facility that was being constructed.

5           And in order to take a look at those  
6           impacts, modeling was done for the town, itself.  
7           Isoplats were constructed and graphs represented  
8           to the public which showed very very slight  
9           differences right within the town, itself, very  
10          slight differences.

11          And what we wanted to convey in that  
12          case was the fact that if you were to model the  
13          old facility and the new facility the impacts were  
14          at roughly the same location, I mean the modeling  
15          was done for the same locations.

16          But you can't take exact modeling  
17          results and superimpose them on one another unless  
18          it's exactly the same facility.

19          So that's our argument down there, was  
20          that it was inappropriate to use modeling for that  
21          particular purpose. We did not mean for our  
22          testimony down there to be construed in any other  
23          case saying that modeling is inappropriate to  
24          determine locations of impacts. On a grosser  
25          scale that is, you know, one of the tools that we

1 use to take things into consideration. So I  
2 wanted to make sure that that was understood.

3 MS. DeCARLO: Do you have any further  
4 comments?

5 MR. RINGER: No.

6 MS. DeCARLO: Staff is available for  
7 cross-examination.

8 HEARING OFFICER WILLIAMS: Okay.  
9 Applicant.

10 CROSS-EXAMINATION

11 BY MR. WHEATLAND:

12 Q Let's start in the FSA at the bottom of  
13 5.1-8 where you indicate that staff believes the  
14 applicant's proposed emission reductions from  
15 Pittsburg and Antioch areas will not fully  
16 mitigate the project emissions impact in the local  
17 area, is that correct?

18 MR. NGO: Yes.

19 MR. WHEATLAND: And to support this  
20 conclusion you present an analysis of the issue in  
21 the following pages of the FSA, is that correct?

22 MR. NGO: Yes.

23 MR. WHEATLAND: And in that analysis at  
24 page 5.1-10 you conclude that ozone levels in  
25 Tracy are approximately 30 percent higher than

1       they are at Pittsburg, is that correct?

2               MR. NGO:   Um-hum, yes.

3               MR. WHEATLAND:   And based on that you  
4       conclude that the emissions generated from sources  
5       between Pittsburg and Tracy contribute 30 percent  
6       of the ozone measured in Tracy.   And that  
7       emissions generated from sources at the Pittsburg/  
8       Antioch area generate approximately 70 percent of  
9       the ozone measured in Tracy, is that correct?

10              MR. NGO:   One at a time, repeat the  
11      question, please?

12              MR. WHEATLAND:   Okay.   Well, you  
13      conclude first that emissions generated from  
14      sources between Pittsburg and Tracy contribute 30  
15      percent of the ozone measured in Tracy, right?

16              MR. NGO:   Yes.

17              MR. WHEATLAND:   And emissions generated  
18      from sources in the Pittsburg/Antioch area  
19      generate approximately 70 percent of the ozone  
20      measured in Tracy, correct?

21              MR. NGO:   Yes.

22              MR. WHEATLAND:   So for the ozone levels  
23      measured in Tracy, is it your conclusion that 30  
24      percent of those levels can be explained from  
25      emissions between Pittsburg and Tracy, and that 70



1 percent of those levels can be explained by  
2 emissions from Pittsburg and Tracy areas, is that  
3 correct?

4 MR. NGO: You got to go slow --

5 MR. WHEATLAND: Thirty percent is  
6 between Pittsburg and Tracy and 70 percent is from  
7 Pittsburg area, is that right?

8 MR. NGO: Yes.

9 MR. WHEATLAND: In your opinion -- is it  
10 your opinion that emissions from the Livermore  
11 area contribute to ozone levels in Tracy?

12 MR. NGO: Yes, it's true.

13 MR. WHEATLAND: Is it your opinion the  
14 emissions from the portion of the Bay Area that  
15 are upwind of Livermore also contribute to ozone  
16 levels in Tracy?

17 MR. NGO: Depend on what portion it is.

18 MR. WHEATLAND: Well, some of the  
19 portions would contribute?

20 MR. NGO: Some of the portion contribute  
21 more than the others --

22 MR. WHEATLAND: Okay.

23 MR. NGO: -- to be clarify.

24 MR. WHEATLAND: So if the emissions from  
25 Pittsburg and Antioch contribute 70 percent of the

1 ozone, and emissions from Pittsburg to Tracy  
2 contribute 30 percent of the ozone, and emissions  
3 from Livermore contribute some, and emissions from  
4 upwind of Livermore contribute some, don't we have  
5 more than 100 percent?

6 MR. NGO: I'm thinking you need to work  
7 on your math a little bit here.

8 MR. WHEATLAND: Well, I have 70 percent  
9 plus 30 --

10 MR. NGO: Hold on, hold on --

11 MR. WHEATLAND: -- plus Livermore plus  
12 upwind --

13 MR. NGO: -- hold your horses. What we  
14 are saying, the air mass from Pittsburg/Antioch,  
15 what we are saying if we're going to go travel  
16 down to Livermore Valley, and with -- to Tracy,  
17 that's what we are saying.

18 So what we saying, between Pittsburg to  
19 Tracy there were a 30 percent contribution  
20 emission impact from that area.

21 MR. WHEATLAND: Um-hum.

22 MR. NGO: So 70 percent from Pittsburg  
23 and 30 percent from that area --

24 MR. WHEATLAND: Yes.

25 MR. NGO: -- with the area between where

1       it including Livermore in 30 percent. And so  
2       therefore when you add it up, it's 100, but no  
3       more than 100.

4               MR. WHEATLAND: Oh, so you're including  
5       the emissions from Livermore --

6               MR. NGO: Yes.

7               MR. WHEATLAND: -- in that 30 percent  
8       of the area from Pittsburg to Tracy?

9               MR. NGO: I think so, yes.

10              MR. WHEATLAND: Even though Livermore  
11       isn't between Pittsburg and Tracy?

12              MR. NGO: No. No, it's not.

13              MR. WHEATLAND: Okay.

14              MR. NGO: These facts, these facts were  
15       presented in your own AFC.

16              MR. WHEATLAND: You can do that on  
17       redirect. I'm just doing the math with you.

18              MR. NGO: Okay.

19              MR. WHEATLAND: Okay. On page 5.1-11 of  
20       the FSA you go on to indicate that this 70 percent  
21       and 30 percent split for contributions to ozone  
22       levels would also apply to PM10 levels, is that  
23       correct?

24              MR. NGO: I think I can only do one  
25       thing at a time, so can you give me a minute to

1 answer?

2 MR. WHEATLAND: Does the 70 percent and  
3 30 percent split for contributions to ozone levels  
4 also apply to PM10 levels, according to your  
5 testimony?

6 MR. NGO: Okay, to answer your first  
7 question --

8 HEARING OFFICER WILLIAMS: Mr. Ngo, you  
9 have to answer the questions as he presents them  
10 to you.

11 MR. NGO: Oh, okay. I thought I haven't  
12 finished answer the first question. That's why  
13 I --

14 MS. DeCARLO: He was still attempting to  
15 answer the first question.

16 MR. NGO: That's what I'm trying to do,  
17 so that's why I try to --

18 MR. WHEATLAND: All right, --

19 HEARING OFFICER WILLIAMS: Okay, well,  
20 let's go back to that first question then. And  
21 the first question is, the 70/30 percent was  
22 split, I believe?

23 MR. WHEATLAND: Well, my question was if  
24 we have 70 percent from Pittsburg and 30 percent,  
25 and then an additional percent from Livermore and

1 an additional percent from upwind of Livermore,  
2 don't we have --

3 MR. NGO: No, that not what I said.

4 MR. WHEATLAND: Well, let me --

5 MR. NGO: What I said was Livermore --

6 MR. WHEATLAND: Can I ask the question?

7 HEARING OFFICER WILLIAMS: No, no, I  
8 think the clarification is that what he was trying  
9 to present is the data that suggests that  
10 Livermore is part of the -- is included within the  
11 30 percent or the 70 percent.

12 MR. NGO: The 30 percent.

13 HEARING OFFICER WILLIAMS: Within the 30  
14 percent range that was provided.

15 MR. WHEATLAND: All right, well, I'll  
16 withdraw that question, then. Let's move on, in  
17 the interests of time let's move on.

18 HEARING OFFICER WILLIAMS: Okay.

19 MR. WHEATLAND: So I'm asking you now if  
20 the 70/30 percent split for contribution to ozone  
21 levels would also apply to PM10 levels? Is that  
22 your testimony?

23 MR. NGO: Based on the air mass, the  
24 main thing -- Commissioner, the main thing we have  
25 a problem with, we don't have the PM10 data in

1 Tracy. Okay. And we are have to try to find  
2 something. And we are trying to justify or to  
3 facilitate the siting of the project by giving the  
4 applicant more emission, more effective in the  
5 emission reduction than it would normally, under  
6 consideration at the time, the consideration at  
7 the time, bearing the settlement from -- the new  
8 settlement East Altamont and the District was, you  
9 know, we don't have that at the time, but at the  
10 time the prevailing belief both from the District  
11 and the ARB was at 27 percent --

12 MR. WHEATLAND: If I could interrupt  
13 here, the question I asked was a yes or no  
14 question. I simply asked him if the 70 percent,  
15 30 percent split for contribution to ozone also  
16 applies to PM10 according to his testimony on page  
17 5.1-11.

18 That can be answered yes or no.

19 MR. NGO: Yes.

20 MR. WHEATLAND: Thank you. So what this  
21 means --

22 MR. NGO: But I like to address that, to  
23 talk to the Commissioners to address the question,  
24 the reason why we're doing it.

25 MR. WHEATLAND: That's why we --

1 MR. NGO: Is that okay?

2 MR. WHEATLAND: That's why we have  
3 redirect. Your counsel can ask you more questions  
4 when I finish with mine.

5 MS. DeCARLO: I'm sorry, Mr. Wheatland,  
6 but staff did not -- staff gave your witnesses  
7 wide latitude in answering our questions. I would  
8 appreciate it if you could do the same here.

9 HEARING OFFICER WILLIAMS: Well, why  
10 don't you ask your next question, Mr. Wheatland.

11 MR. WHEATLAND: So what this means is  
12 you believe that 70 percent of the PM10 levels  
13 observed in Tracy are contributed by emissions  
14 sources in the Pittsburg/Antioch area, is that  
15 correct?

16 MR. NGO: Can you ask the question  
17 again?

18 MR. WHEATLAND: So what this means is  
19 you believe that 70 percent of the PM10 levels  
20 observed at Tracy are contributed by emissions  
21 sources in the Pittsburg/Antioch area, is that  
22 correct?

23 MR. NGO: Your question is not correct.  
24 First of all, because there is no PM10 level  
25 measuring in Tracy, so your question is -- I can't

1 answer your question.

2 MR. WHEATLAND: All right. And would  
3 that also be true with the 30 percent, you can't  
4 answer it with respect to the 30 percent in terms  
5 of PM10 levels in Tracy, is that right?

6 MR. NGO: Thirty percent is what my  
7 estimate, my most reasonable judgment.

8 MR. WHEATLAND: All right, now peak  
9 ozone levels occur in Tracy and in most of  
10 California during the summer and early fall months  
11 between about June and September, is that correct?

12 MR. NGO: Not for this year. I mean  
13 they could be, it all depend on the weather  
14 condition, the wind pattern. So, for this year  
15 even in October we have a lot of violation.

16 MR. WHEATLAND: All right. Generally,  
17 though, don't peak ozone levels occur in Tracy,  
18 and most of California, during the summer and  
19 early fall?

20 MR. NGO: Yes, generally.

21 MR. WHEATLAND: And peak PM10 levels  
22 occur in Tracy during the winter months, is that  
23 correct? Peak PM10 levels occur in Tracy during  
24 the winter, is that right?

25 MR. NGO: I can't answer your question



1 because PM10 does not have any measurement in  
2 Tracy. We wouldn't have any monitor station in  
3 Tracy to measure PM10, so I don't know. I don't  
4 know what your question is.

5 MR. WHEATLAND: Let me read to you a  
6 sentence at page 5.1-32 from the FSA. Quote,  
7 "Taking into account that the area typically  
8 experiences violations of the PM10 standard only  
9 during the four winter months, November to  
10 February, staff recommends that only the four-  
11 month portion of the project's remaining PM10  
12 emissions liability be mitigated with additional  
13 local PM10 emission reductions."

14 So let me ask you again, according to  
15 your testimony, don't the peak of violations of  
16 PM10 occur typically during the four winter  
17 months?

18 MR. NGO: You not talking about just in  
19 Tracy. This is the general local area what I base  
20 my analysis based on the Livermore PM10  
21 measurement. And if that was your question, yes,  
22 it is.

23 MR. WHEATLAND: Okay, good. And on page  
24 5.1-5 of the FSA, you indicate that during the  
25 summer months --

1 MR. NGO: Hold on, what page, again?

2 MR. WHEATLAND: 5.1-5.

3 MR. NGO: Okay.

4 MR. WHEATLAND: You indicate that during  
5 the summer months winds at the project site are  
6 predominately from the west, is that correct?

7 MR. NGO: I'm trying to find the  
8 section. Yes.

9 MR. WHEATLAND: Okay. And on the same  
10 page of the FSA you indicate that during the  
11 winter months the winds at the project site are  
12 predominately from the north, southeast and west,  
13 is that correct?

14 MR. NGO: I would have to add the wind  
15 direction are more variable with predominately  
16 from the north, southeast and west.

17 MR. WHEATLAND: All right. Isn't it  
18 correct that based on the figures in the AFC,  
19 which you haven't questioned, during the winter  
20 months the winds are blowing from the quadrants  
21 between west and east through the south for over  
22 50 percent of the time?

23 MR. NGO: What picture, again, that?

24 MR. WHEATLAND: That's figure 8.1-7D in  
25 the AFC, and 8.1-7G.

1 MR. NGO: Can you tell me what page it  
2 is?

3 MR. WHEATLAND: It's in the appendix --

4 MR. NGO: Oh, okay, I found it. I got  
5 it. Okay. So you're talking about pictures 8.1-  
6 7D?

7 MR. WHEATLAND: Right, through G, that's  
8 correct.

9 MR. NGO: D to G.

10 MR. WHEATLAND: And this shows during  
11 the winter months the winds are blowing through  
12 the quadrants between west and east, through the  
13 south for over 50 percent of the time, correct?

14 MR. NGO: When you say winter, what  
15 month are you talking about? October, November,  
16 December?

17 MR. WHEATLAND: Yeah, January, February,  
18 March, October, November, December.

19 MR. NGO: Oh, you are talking about the  
20 whole year, then?

21 MR. WHEATLAND: No, I'm talking just  
22 about the winter.

23 MR. NGO: The winter -- let me ask you  
24 to clarification again because I'm confused.

25 MR. WHEATLAND: Well, take a look at

1       these charts. Do you disagree with these wind  
2       charts here?

3               MR. NGO: No.

4               MR. WHEATLAND: Okay.

5               MR. NGO: I did not disagree with it.

6               MR. WHEATLAND: All right. Well, isn't  
7       it correct that during these winter months this is  
8       the -- about 50 percent of the time the project  
9       emissions would have zero impact on Tracy?

10              MR. NGO: Oh, I don't think so. That's,  
11      you know, unless you have to provide an analysis  
12      to show that there is no impact, I don't see that,  
13      I think that statement is over-stated.

14              MR. WHEATLAND: Well, did you take into  
15      account in your analysis the wind directions?

16              MR. NGO: Yes, I did.

17              MR. WHEATLAND: All right, and where is  
18      that set forth in your analysis? I didn't see  
19      that.

20              MR. NGO: Well, I say that -- okay, page  
21      1.1-20, air quality table 6 -- I'm sorry, 5.1-20,  
22      air quality table 6. Facility operation emission  
23      impact on ambient air quality. That analysis was  
24      based on the modeling. And the modeling take into  
25      account the windrows, how fast it is, how slow it

1 is, and everything else. All met condition. And  
2 it provide you with a number. Okay.

3 So when we are looking at, or reviewing  
4 the impact analysis all that wind condition have  
5 been taken into account.

6 On page 5.1-21.

7 MR. WHEATLAND: On page 5.1-10 of the  
8 FSA you referenced an Air Resources Board study as  
9 the basis for your position that 73 percent of the  
10 emission offsets provided by East Altamont project  
11 from sources in Oakland, Redwood City, San Leandro  
12 and San Jose would have no appreciable value as a  
13 mitigation measure for the project's ozone impacts  
14 in the San Joaquin Valley, is that correct?

15 MR. NGO: Yes.

16 MR. WHEATLAND: And based on this value  
17 you conclude at page 5.1-27 that the East Altamont  
18 project will need to provide an additional 133  
19 tons a year of NOx and 42 tons of VOC mitigation  
20 for a total of 175 tons of ozone precursor  
21 mitigation to mitigate the project's impacts on  
22 ozone levels in the San Joaquin Valley air basin.

23 MR. NGO: Not entirely based on this  
24 number, though.

25 MR. WHEATLAND: Not entirely based on

1       that number, so just --

2               MR. NGO:  Not entirely.

3               MR. WHEATLAND:  -- partially based on  
4       that number, okay.

5               MR. NGO:  You want I want to clarify it.  
6       Can I?  The 27 percent is what the ARB had  
7       recommend in their study; that the only thing we  
8       have at that time.

9               The San Joaquin Valley Air Pollution  
10       Control District Staff also sign an agreement with  
11       Tesla also using that 27 percent.

12               They come to us and they come to the  
13       workshop and they are making statement that 27  
14       percent is the effectiveness of the emission from  
15       the Bay Area, all the Bay Area.  Nothing -- I mean  
16       everything, including the one in Pittsburg and  
17       Antioch area.

18               So what we did, we trying to justify a  
19       little bit more so that they don't have to provide  
20       more emission offset, and so using the analysis  
21       from my analysis of ambient air quality analysis  
22       which the applicant have a concern with, we be  
23       able to increase that 27 percent to 70 percent.

24               So what we did there, what we trying to  
25       do them a favor and then I guess they have a

1 problem with it.

2 MR. WHEATLAND: Yes. Let me ask you  
3 then, do you know whether the California Air  
4 Resources Board agrees with your use of their  
5 study for this purpose?

6 MR. NGO: No.

7 MR. WHEATLAND: You don't know?

8 MR. NGO: I don't know that the ARB --  
9 we didn't ask the ARB, again the number 27 was  
10 saying is not just from the ARB --

11 MR. WHEATLAND: I'm just asking about  
12 the ARB. And you haven't asked them, correct?

13 MR. NGO: I need to provide your answer  
14 with clarification. Not only for your own  
15 purpose, but for my Commissioners --

16 HEARING OFFICER WILLIAMS: Mr. Ngo, I  
17 believe you've already testified that you didn't  
18 ask the ARB, California Air Resources Board.  
19 That's the only point he's trying to make right  
20 now.

21 MR. NGO: Okay.

22 MR. WHEATLAND: And that's correct, you  
23 didn't ask them --

24 MR. NGO: No, I didn't ask.

25 MR. WHEATLAND: All right, and do you

1 know whether the California Air Resources Board  
2 agrees with your conclusion that 175 tons a year  
3 of additional ozone precursor mitigation is  
4 required for this project?

5 MR. NGO: No. The ARB have not made any  
6 comment on my -- on the air quality staff  
7 analysis.

8 MR. WHEATLAND: And you didn't ask them,  
9 correct?

10 MR. NGO: No.

11 MR. WHEATLAND: Do you know whether the  
12 San Joaquin Valley APCD agrees with your  
13 conclusion that 175 tons a year of additional  
14 ozone precursor mitigation is required for the  
15 project?

16 MR. NGO: Originally they did.  
17 Originally in the few workshop when we come up  
18 with some number, they are saying that their  
19 analysis were pretty much on the same line, have  
20 almost the same number that we are, just slightly  
21 different.

22 MR. WHEATLAND: Originally they did.  
23 What is their current understanding?

24 MR. NGO: Right now the District has  
25 signed the agreement which taking into account



1 your analysis of this emission reduction credit to  
2 come up with \$1 million, I guess. And so I do not  
3 know what the District position right now. So I  
4 don't know, you have to ask them.

5 MR. WHEATLAND: And where did they set  
6 forth this original position? When exactly did  
7 the original --

8 MR. NGO: They have saying the first one  
9 is one of the comment on the PSA. I don't exactly  
10 remember the date.

11 MR. WHEATLAND: But these are written  
12 comments on the PSA?

13 MR. NGO: Yes.

14 MR. WHEATLAND: You believe that they  
15 agree to the --

16 MR. NGO: They agree with our position  
17 that the project will cause significant impact.

18 MR. WHEATLAND: All right, --

19 MR. NGO: And --

20 MR. WHEATLAND: -- but my question was  
21 with respect to the 175 tons, which is additional  
22 ozone precursor mitigation you are recommending --

23 MR. NGO: If you asking the exact  
24 number, I don't think they would agree with that,  
25 because they say in the ballpark figure.

1 MR. WHEATLAND: All right, and did you  
2 ask them?

3 MR. NGO: No, they come to our workshop  
4 and say that.

5 MR. WHEATLAND: Okay, but you haven't  
6 asked them with respect to your recommendation?  
7 That's all I'm asking.

8 MR. NGO: For now, no, I didn't ask  
9 them, okay, to answer your question.

10 MR. WHEATLAND: Okay, good. Does the  
11 Bay Area AQMD agree with your conclusion that 175  
12 tons a year of additional ozone precursor  
13 mitigation is required for this project?

14 MR. NGO: That question you have to ask  
15 the District, the Bay Area District.

16 MR. WHEATLAND: I'm asking your  
17 understanding.

18 MR. NGO: I didn't ask them the  
19 question, so I can't give you the answer.

20 MR. WHEATLAND: Okay. In the October  
21 10th errata to your testimony you include a  
22 discussion of the cumulative PM10 air quality  
23 impacts of the project in conjunction with the  
24 Tesla Power Plant project, correct?

25 MR. NGO: Yes.

1           MR. WHEATLAND: And it includes, also,  
2           the Tracy Peaker project, the Tracy Biomass Plant,  
3           the Owens Brockway facility and the Tracy Hills,  
4           South Schulte and Mountain House development  
5           projects, is that correct?

6           MR. NGO: Yes.

7           MR. WHEATLAND: In the errata you  
8           indicate that you included mobile source emissions  
9           only for the Mountain House development project,  
10          is that correct?

11          MR. NGO: Yes.

12          MR. WHEATLAND: Okay, why didn't you  
13          include mobile source emissions for the Tracy  
14          Hills project?

15          MR. NGO: Okay. I need a little bit of  
16          time to answer your question here, okay, so don't  
17          jump too fast.

18          MR. WHEATLAND: Okay, I promise.

19          MR. NGO: Okay. First of all, the  
20          reason why we do the cumulative impact analysis  
21          because there was a request from the member of  
22          public on the resolution workshop where there's  
23          maybe a week before today.

24          And then what I did was I promised I'd  
25          go back and look at the data. And see what do we

1 have. And see maybe we can run the analysis.

2 The reason why I was so, after I  
3 promised, I actually acquired new computer, what I  
4 can use to run that model. I usually couldn't be  
5 able to do that. That's why we asked the  
6 applicant to perform the cumulative impact  
7 analysis from the day where we had the data  
8 adequacy.

9 So we come back, and then we got the  
10 information from Tesla, whatever I can get, and  
11 then I got the data -- the input file. I run the  
12 model. And then I realized there are information  
13 from South Schulte and Tracy Hill development what  
14 I don't have. Those information were contained in  
15 the EIR, which is not in the original, in the  
16 input file for the cumulative impact analysis.

17 But I do have the environmental impact  
18 report for the Mountain House, including the  
19 construction emission and mobile source emission  
20 from that community. And that's the reason why I  
21 only include that.

22 MR. WHEATLAND: Were these mobile source  
23 emission estimates for the Tracy Hills and South  
24 Schulte development projects included in the  
25 cumulative impacts analysis for the Tracy Peaker

1 project?

2 MR. NGO: For the Tracy Peaker, I don't  
3 think so.

4 MR. WHEATLAND: If it wasn't necessary  
5 to include the mobile source emissions from Tracy  
6 Hills and South Schulte projects in the cumulative  
7 impacts analysis for Tracy Peaker project, do you  
8 think it's necessary to do it for the Mountain  
9 House project?

10 Why the difference?

11 MR. NGO: Well, you want to be the same,  
12 all you have to do, downsize the project to  
13 164 megawatt, and move to Tracy location, and we  
14 don't have this argument anymore. That's all I  
15 can say.

16 MR. WHEATLAND: So the nature of your  
17 cumulative impacts analysis depends upon the size  
18 of the project, is that your testimony?

19 MR. NGO: No, that not true.

20 MR. WHEATLAND: Oh, then let me ask --

21 MR. NGO: The nature of the analysis, I  
22 include all source of emission --

23 MR. WHEATLAND: All right.

24 MR. NGO: -- that are reasonably  
25 foreseen in the future to be what could happen in

1 the foreseen future, and all the emission have to  
2 be included in the cumulative impact analysis.

3 MR. WHEATLAND: Okay, then let me ask  
4 the question again. If it wasn't necessary to  
5 include Tracy Hills and South Schulte in the  
6 cumulative impacts analysis for Tracy Peaker, why  
7 is it necessary to include Mountain House in the  
8 East Altamont project?

9 MR. SARVEY: Objection, objection.

10 MR. WHEATLAND: Who's objecting?

11 MR. SARVEY: I'm objecting.

12 MR. WHEATLAND: And?

13 MR. SARVEY: He did not prepare the  
14 analysis for the Tracy Peaker; he did not prepare  
15 the analysis for the Tesla project, so why are you  
16 asking him these questions and wasting valuable  
17 hearing time?

18 MR. WHEATLAND: Because we have the  
19 Commission Staff here, we have Mr. Ringer here, we  
20 have the Commission Staff here.

21 HEARING OFFICER WILLIAMS: Mr. Sarvey,  
22 I'm going to have to -- if we're going to get  
23 through this, it's staff's witness, and staff  
24 needs to make the objections.

25 MR. SARVEY: I'm trying to get through

1 it, that's what I'm trying to do.

2 HEARING OFFICER WILLIAMS: So, let's not  
3 have any cross --

4 MR. WHEATLAND: Okay, I'm just going to  
5 withdraw that last question so we can move on.

6 MR. SARVEY: Thank you.

7 MR. WHEATLAND: The cumulative impacts  
8 analysis that you prepared for the East Altamont  
9 project was just for PM10, is that correct?

10 MR. NGO: Yes, just for PM10 because  
11 that's all the information that I can do, again,  
12 just a one-day turnaround thing, so.

13 MR. WHEATLAND: Okay. And you performed  
14 two cumulative impact analyses for the errata, one  
15 which includes construction impacts associated  
16 with Mountain House and a second which just  
17 includes emissions associated with the Mountain  
18 House residents, is that right?

19 MR. NGO: Resident and mobile source.

20 MR. WHEATLAND: Okay, let's first look  
21 at the analysis that you performed which includes  
22 the construction of Mountain House. For this case  
23 how did the annual PM10 emissions that you assumed  
24 for the Mountain House project compare on a tons-  
25 per-year basis with the maximum allowable PM10

1 emissions from the East Altamont project?

2 MR. NGO: Repeat your question again,  
3 please.

4 MR. WHEATLAND: Yes, how did the annual  
5 PM10 emissions that you assumed for the Mountain  
6 House project compare on a tons-per-year basis  
7 with the maximum allowable PM10 emissions from the  
8 East Altamont project?

9 MR. NGO: First of all I did not assume  
10 the emissions for the Mountain House project.  
11 They were produced and printed in the EIR for the  
12 Mountain House project. So answer your first  
13 question, no, I didn't assume that.

14 MR. WHEATLAND: Okay.

15 MR. NGO: And the second part of your  
16 question was what the comparison between the  
17 emission from the Mountain House to the East  
18 Altamont?

19 MR. WHEATLAND: Yes.

20 MR. NGO: Tell you the truth I don't  
21 remember the exact number for those; I didn't  
22 bring the EIR with me, but it in the EIR.

23 MR. WHEATLAND: Okay.

24 MR. NGO: If somebody have an EIR and I  
25 see it, I can --



1 MR. WHEATLAND: Well, I don't want to  
2 waste time on it today. If you don't remember the  
3 exact number, I appreciate that. Do you remember  
4 just approximately?

5 MR. NGO: No.

6 MR. WHEATLAND: Okay.

7 MR. NGO: The only thing we do, we take  
8 that number, convert into the gram per second and  
9 then we input into the model, that's all we did.

10 MR. WHEATLAND: Okay, when you were  
11 looking at those numbers did you look, for  
12 example, if a fraction of annual PM10 emissions  
13 for the Mountain House project in terms of what  
14 fraction consisted of paved or unpaved road dust?

15 MR. NGO: No, the EIR have these not  
16 that specific about it.

17 MR. WHEATLAND: Okay, that's fine.

18 MR. NGO: By the way, the --

19 HEARING OFFICER WILLIAMS: Mr. Ngo,  
20 there's no question pending.

21 MR. NGO: I was trying to answer his  
22 question --

23 MR. WHEATLAND: All right, and we're  
24 still talking about the construction case. You  
25 indicate that the peak 24 average PM10

1 concentration you found was 32 mcg/cubic meter, is  
2 that correct?

3 MR. NGO: For 24-hour PM10, yes.

4 MR. WHEATLAND: What fraction of this  
5 impact is associated with the Mountain House  
6 development?

7 MR. NGO: If you -- hold on. The East  
8 Altamont project, alone, according to the AFC,  
9 will cause a 6.6 mcg/cubic meter of PM10 on a 24-  
10 hour basis.

11 MR. WHEATLAND: All right, that's the  
12 emissions for the Mountain House? And so what --

13 MR. NGO: Oh, you're talking about East  
14 Altamont or Mountain House, I'm sorry.

15 MR. WHEATLAND: That was the project or  
16 Mountain House?

17 MR. NGO: That's for the project.

18 MR. WHEATLAND: All right, 6.6 mcg?

19 MR. NGO: Yes, for the 6.6 mcg.

20 MR. WHEATLAND: And how about for the  
21 East Altamont development, itself?

22 MR. NGO: You mean for the East --

23 MR. WHEATLAND: I'm sorry, I'm sorry.

24 MR. NGO: That's why I got confused --

25 MR. WHEATLAND: Yeah, how about for the

1 Mountain House development, itself?

2 MR. NGO: Mountain House alone?

3 MR. WHEATLAND: Yes, sir.

4 MR. NGO: When you talking about full  
5 build-out or construction?

6 MR. WHEATLAND: We're still in the  
7 construction case.

8 MR. NGO: Okay, if Mountain House  
9 construction alone, you probably talking about  
10 32.5 just for the Mountain House construction.

11 MR. WHEATLAND: And now talking just  
12 again about the Mountain House development, what  
13 fraction of that impact would be associated with  
14 dust emissions? Now we're talking about  
15 construction impacts. What percentage would be  
16 just dust emissions?

17 MR. NGO: I don't recall. But what I  
18 did, again it was a limited time --

19 HEARING OFFICER WILLIAMS: Mr. Ngo,  
20 again, --

21 MR. NGO: I'm sorry. I don't recall.

22 MR. WHEATLAND: Would you expect it to  
23 be a large fraction?

24 MR. NGO: Define large, what you mean by  
25 large?

1 MR. WHEATLAND: Over half.

2 MR. NGO: Yes.

3 MR. WHEATLAND: Okay. Now, I just asked  
4 you a series of questions about your analysis.  
5 Apart from your answers today, where can I find  
6 the information that shows how you did this  
7 analysis?

8 HEARING OFFICER WILLIAMS: Which  
9 analysis, counsel?

10 MR. WHEATLAND: This is the cumulative  
11 impacts case, including Mountain House that we've  
12 just been talking about.

13 MR. NGO: Oh. I can send you the input  
14 file if you need it for the model.

15 MR. WHEATLAND: When did you begin to  
16 prepare the cumulative PM10 analyses that we've  
17 just been discussing?

18 MR. NGO: When?

19 MR. WHEATLAND: Um-hum.

20 MR. NGO: October 9th, 2002.

21 MR. WHEATLAND: Okay. Now, I'd like to  
22 turn to page 5.1-21 where you make this statement:  
23 Because the development of the new Mountain House  
24 community would result in a significant impact to  
25 air quality, the addition of new emissions sources

1 would further worsen that impact."

2 That's your testimony, correct?

3 MR. NGO: Yes.

4 MR. WHEATLAND: Is that the conclusion  
5 that was reached by the San Joaquin County in the  
6 EIR for the Mountain House project, or is that  
7 your independent conclusion?

8 MR. NGO: That my independent  
9 conclusion.

10 MR. WHEATLAND: Okay. And do you know  
11 whether the San Joaquin County concluded that air  
12 quality impacts from the Mountain House project  
13 would be significant?

14 MR. NGO: Oh, you have to ask them. I  
15 haven't seen any analysis from the District to  
16 really answer you that question.

17 MR. WHEATLAND: Okay. Also in the FSA,  
18 at the same page you make the following statement:  
19 Staff believes that under certain meteorological  
20 conditions such as when the wind is calm and the  
21 weather is hot, the emissions from all three  
22 proposed power plants combined with the emissions  
23 from the development of the Mountain House  
24 community could cause a significant cumulative air  
25 quality impact."

1                   That's your testimony, correct?

2                   MR. NGO:   Yes.

3                   MR. WHEATLAND:  Was this statement based  
4                   on the cumulative air quality impacts analysis  
5                   that was presented in the errata to your  
6                   testimony?

7                   MR. NGO:   No.

8                   MR. WHEATLAND:  Okay.  Then what was it  
9                   based on?

10                  MR. NGO:  My own judgment, logic.  You  
11                  already have an EIR that say the development of  
12                  the Mountain House will cause emission increase.  
13                  It will interfere with progress to attainment.  
14                  And you adding on top of that new emission, and  
15                  you don't think that not going to be -- I mean,  
16                  that how I come up with that conclusion.

17                  MR. WHEATLAND:  Okay.  Is the cumulative  
18                  air quality impacts analysis presented in your  
19                  errata consistent with this statement:  In  
20                  particular are the peak PM10 concentrations  
21                  reported in the errata associated with days when  
22                  the wind is calm and the weather is hot?

23                  MR. NGO:  You splitting hair here.  When  
24                  we talking about this condition, what I was saying  
25                  here is for ozone.  We are talking about ozone

1 condition that we see more often in the summer.

2 Now, for the cumulative impact analysis  
3 we are mainly dealing with PM10, with during that  
4 time the weather is not going to be hot. It going  
5 to be cold.

6 So the standard condition is still  
7 correct. But the weather, whether it hot or cold,  
8 is no, is not correct. Is not apply to that  
9 analysis.

10 MR. WHEATLAND: All right. And then on  
11 what days were the peak PM10 concentrations  
12 modeled to occur in your cumulative impacts  
13 analysis?

14 MR. NGO: What day?

15 MR. WHEATLAND: Yes.

16 MR. NGO: Oh, oh, I see. No, again, I  
17 didn't look at those number. We have something to  
18 show to satisfy the public request, so I just  
19 trying to do it quickly like this.

20 MR. WHEATLAND: Okay. In response to an  
21 earlier question you indicated that PM10 levels in  
22 the Tracy area generally occur during the winter  
23 months. Do you recall that answer?

24 MR. NGO: Yes.

25 MR. WHEATLAND: So your conclusion in

1 the FSA regarding cumulative impacts occurring on  
2 days when the weather is hot is related to ozone  
3 and not PM10, is that what I heard you say?

4 MR. NGO: I'm sorry, repeat the  
5 question, please?

6 MR. WHEATLAND: So if I understand --  
7 I'm just trying to understand -- so if I  
8 understand what you're telling us today, your  
9 conclusion in the FSA regarding cumulative impacts  
10 occurring on the days when the weather is hot,  
11 that's related to ozone, right?

12 MR. NGO: Yes.

13 MR. WHEATLAND: And the cumulative  
14 impacts analysis you discuss in the errata is only  
15 focused on PM10, is that right?

16 MR. NGO: Yes.

17 MR. WHEATLAND: Did you perform a  
18 cumulative impacts modeling analysis for ozone?

19 MR. NGO: No.

20 HEARING OFFICER WILLIAMS: You may  
21 continue.

22 MR. NGO: Oh, okay. I just want to make  
23 sure. The reason why because --

24 HEARING OFFICER WILLIAMS: Excuse me,  
25 stop right there. Do you want --



1 (Laughter.)

2 HEARING OFFICER WILLIAMS: Do you want  
3 the rest of this?

4 MR. NGO: That's why I look at you  
5 first.

6 HEARING OFFICER WILLIAMS: No was the  
7 answer.

8 MR. WHEATLAND: I loved the no, yeah.  
9 I'm fine with that.

10 HEARING OFFICER WILLIAMS: Okay, fine.

11 MS. DeCARLO: I'm going to have to --  
12 I'm sorry, respectfully object. I think if the  
13 applicant is going to ask questions of staff,  
14 staff should be able to respond as fully as they  
15 need to, to adequately and appropriately answer.  
16 And any attempt to limit them to simply a yes or  
17 no response is inappropriate.

18 HEARING OFFICER WILLIAMS: Well,  
19 counsel, I think you'll have full opportunity on  
20 redirect to provide any explanation that you like.  
21 But, I don't see that we can constrict applicant  
22 to get more than the applicant is requesting.

23 If the answer is no, it can be answered  
24 that way. Or yes. Then, I think that's all  
25 that's required.

1 MS. DeCARLO: I just want to note that  
2 staff has been more than lenient with every other  
3 party witness in allowing them to go beyond the  
4 specific question.

5 HEARING OFFICER WILLIAMS: I understand.  
6 If that's your preference, that's fine. But  
7 apparently it's not applicant's preference, so I  
8 can't dictate to them how to proceed.

9 MR. WHEATLAND: So if there are  
10 cumulative ozone impacts you really don't know  
11 where those cumulative ozone impacts will be  
12 likely to occur, is that correct?

13 MR. NGO: Well, first of all there is no  
14 ozone modeling analysis for a single project.  
15 Normally ozone modeling analysis would need a lot  
16 more information.

17 We are talking about emission from many  
18 many sources over the large area. And we are  
19 talking about somebody had to do the emission  
20 inventory on individual cells of those individual  
21 cell to be able to perform that analysis. And so  
22 the answer to your question is no.

23 MR. WHEATLAND: Thank you very much.  
24 And then the impacts could very well be regional  
25 impacts and not localized impacts, right?

1 MR. NGO: Well, you have to define what  
2 regional is. What is it?

3 MR. WHEATLAND: Well, isn't it correct  
4 that ozone is a regional pollutant, and that one  
5 doesn't generally find localized ozone impacts  
6 associated with a project?

7 MR. NGO: That not true.

8 MR. WHEATLAND: Oh. Okay, then do you  
9 have any reason to believe that the East Altamont  
10 project, with or without the Mountain House  
11 project, can cause a localized ozone impact?

12 MR. NGO: When I say that not true, I  
13 mean your statement not true.

14 MR. WHEATLAND: I understand.

15 MR. NGO: I already said in my testimony  
16 that the problem, the ozone problem and the ozone  
17 and PM10 are both localized and regional.

18 MR. WHEATLAND: All right, I --

19 MR. NGO: So, your, you know, --

20 MR. WHEATLAND: Are you aware of any  
21 other regulatory agency that shares your opinion  
22 that the East Altamont project can cause a  
23 localized ozone impact?

24 MR. NGO: I didn't ask.

25 MR. WHEATLAND: In the errata you make

1 the statement that the result of the above  
2 cumulative impact analysis supports staff's  
3 original conclusion in the final staff assessment  
4 that the project, along with other developments,  
5 would contribute to a significant impact to the  
6 air quality violations in the area. That's your  
7 testimony, correct?

8 MR. NGO: Yes.

9 MR. WHEATLAND: And in the FSA and in  
10 the errata you recommend that the applicant  
11 provide an additional 175 tons per year of NOx and  
12 VOC mitigation, as ozone precursors, is that  
13 correct?

14 MR. NGO: Yes.

15 MR. WHEATLAND: If the cumulative  
16 impacts analysis in the errata only looked at  
17 cumulative PM10 impacts, how can that analysis  
18 support your conclusion that 175 tons per year of  
19 additional ozone precursor mitigation is required?

20 MR. NGO: As the question again, please?

21 MR. WHEATLAND: Well, you've told us  
22 that the cumulative impacts analysis in the errata  
23 only looked at cumulative PM10 impacts. How,  
24 then, can that analysis support your conclusion  
25 that 175 tons per year of additional ozone

1 precursor mitigation is required?

2 MR. NGO: Well, unless you can show me  
3 an analysis that you've done by your own way that  
4 the project will not cause, on a cumulative basis,  
5 to the problem in the area, then it's be right.  
6 But the analysis that I have, lacking of any  
7 modeling analysis for ozone, was a qualitative  
8 analysis which was suggested by Calpine during the  
9 previous hearing using that result.

10 And now you, again it's the same  
11 pattern, you come back and it's just by your own  
12 word.

13 HEARING OFFICER WILLIAMS: What previous  
14 hearing are you referring to?

15 MR. NGO: It was the hearing where we  
16 are talking about we request a cumulative impact  
17 analysis, and they are saying, well, the Mountain  
18 House EIR already there --

19 HEARING OFFICER WILLIAMS: Before this  
20 Committee?

21 MR. NGO: Right. Before the Committee.

22 MR. WHEATLAND: We're almost at the end.

23 MR. NGO: Can you excuse me one minute?

24 MR. WHEATLAND: Sure.

25 (Pause.)

1 MR. NGO: Thank you, I'm back.

2 MR. WHEATLAND: I'm just going to read  
3 to you a couple of quotes, and I just simply want  
4 to know if you agree or disagree.

5 The first one I'm going to read to you  
6 is from page E7 of the FDOC. It says: The  
7 results of the air quality impacts analysis  
8 indicate that the proposed project would not  
9 interfere with the attainment or maintenance, if  
10 applicable, ambient air quality standards for  
11 nitrogen dioxide, carbon monoxide and PM10. The  
12 analysis was based on EPA-approved models and  
13 calculation procedures, and was performed in  
14 accordance with section 414 of the District's new  
15 source review rule."

16 Do you agree or disagree with this  
17 statement?

18 MS. DeCARLO: I'm sorry, what page was  
19 that again?

20 MR. WHEATLAND: That's E-7, page E-7 of  
21 the FDOC.

22 MR. NGO: Okay, let me read the  
23 conclusion again. You talking about page E-7 of  
24 the District final determination of compliance?

25 MR. WHEATLAND: Yes.

1           MR. NGO:   Okay.   And you say that the  
2           conclusion was the result of air quality impact  
3           analysis indicated the proposed project would not  
4           interfere with the attainment or maintenance, if  
5           applicable, ambient air quality standard for NO2,  
6           CO and PM10?

7           MR. WHEATLAND:   Correct.

8           MR. NGO:   Again, before I answer your  
9           question, I have to clarify this.   The District,  
10          again what the District say here is the District  
11          program was geared to the federal standard.   And  
12          to be consistent with the state implementation  
13          plan would gear to attainment of the federal  
14          standard, not the state.

15          So, lacking of this information, that  
16          specific from the District, I cannot say whether I  
17          agree with this.   If you talking about a federal  
18          standard, then I agree.   But if you are talking  
19          about a state standard, then you have to ask the  
20          District to make that clarification.

21          MR. WHEATLAND:   So, I'm sorry, did you  
22          say you would agree or disagree with that?   I just  
23          didn't understand.

24          HEARING OFFICER WILLIAMS:   I don't think  
25          he can answer it yes or.

1 MR. WHEATLAND: Okay, --

2 PRESIDING MEMBER KEESE: I'd like to,  
3 let me just, what I heard was he said -- I'm  
4 asking. I believe I heard you say that you accept  
5 the District's finding as meeting the federal  
6 standard, but you don't know whether they took  
7 into consideration meeting of the state standard?

8 MR. NGO: Thank you, sir, that's exactly  
9 what --

10 PRESIDING MEMBER KEESE: Is that what I  
11 heard?

12 MR. NGO: -- my answer -- that's what  
13 you heard.

14 MR. WHEATLAND: Thank you. The next  
15 quote is from the San Joaquin Valley Air  
16 District's October 10, 2002 letter to the  
17 Commission, which I believe has already been  
18 identified as -- I don't have the exhibit number,  
19 though.

20 It says: With compliance with the  
21 conditions in the project's final determination of  
22 compliance and implementation of the applicant's  
23 air quality mitigation settlement agreement with  
24 the District, the District believes that the East  
25 Altamont Energy Center project will not result in



1 significant unmitigated air quality impacts in the  
2 San Joaquin Valley air basin."

3 Do you agree or disagree with this  
4 statement?

5 HEARING OFFICER WILLIAMS: Counsel, has  
6 that been marked? I don't --

7 MR. WHEATLAND: We're checking right  
8 here to see if we have it.

9 HEARING OFFICER WILLIAMS: It's from San  
10 Joaquin, right?

11 MR. WHEATLAND: October 10th --

12 MR. NGO: Okay, October 10, 2002?

13 MR. WHEATLAND: Yes.

14 MR. NGO: Where's that statement, again?  
15 I'm sorry.

16 HEARING OFFICER WILLIAMS: Yeah, we're  
17 trying to figure out if we've marked it yet. Can  
18 I get some help?

19 MR. WHEATLAND: Yeah, we're looking  
20 right here. You know what, I don't believe we've  
21 marked it, so if we could mark it as the next in  
22 order, please. We'll make some copies.

23 HEARING OFFICER WILLIAMS: We'll place  
24 it then under your air quality testimony --

25 MR. WHEATLAND: Thank you.

1 HEARING OFFICER WILLIAMS: It will be  
2 4G-1.

3 MR. WHEATLAND: And it's the second  
4 paragraph on the first page of that letter.

5 MR. NGO: Your question is you want me  
6 to answer whether I agree with the District  
7 statement on the first sentence of the second  
8 paragraph?

9 MR. WHEATLAND: Yes, please.

10 MR. NGO: I do not agree with that  
11 statement.

12 MR. WHEATLAND: Okay, so -- that's fine,  
13 Mr. Ngo, thank you very much, that's all the  
14 questions that I have.

15 MR. NGO: You're welcome.

16 HEARING OFFICER WILLIAMS: Okay, before  
17 we continue I think now is probably a good time  
18 for a dinner break.

19 PRESIDING MEMBER KEESE: And the  
20 Committee will caucus and tell you what our future  
21 is.

22 (Laughter.)

23 HEARING OFFICER WILLIAMS: Okay, with  
24 that, we'll go off the record.

25 (Whereupon, at 6:40 p.m., the hearing

1           was adjourned, to reconvene at 7:05  
2           p.m., later this same evening.)

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1 EVENING SESSION

2 7:13 p.m.

3 PRESIDING MEMBER KEESE: We were at a  
4 certain point. Major, would you tell us where we  
5 were.

6 HEARING OFFICER WILLIAMS: Yes. We've  
7 had a request, however, from a member of the  
8 public that she be allowed to present her public  
9 comment at this point. She has got to get her  
10 children to bed.

11 So, the Committee will do that. We will  
12 take the public comment out of order to  
13 accommodate the witness.

14 MS. BUENAVISTA: I truly appreciate  
15 that, thank you very much. And I'll make it very  
16 brief. I just wanted to get my two cents in.

17 The CEC Staff has taken the position  
18 that the air quality mitigation provided is  
19 inadequate. In particular, the staff asserts that  
20 the project will result in significant localized  
21 air quality impacts.

22 In all fairness, the Bay Area Air  
23 District and the San Joaquin Valley Air Pollution  
24 Control District have stated that adequate  
25 mitigation is in place. And this is the

1 information that came from the applicant. Gary  
2 Rubenstein was kind enough to provide me with that  
3 information.

4 I see our right to breathe the cleanest  
5 air possible in some serious jeopardy,  
6 cumulatively speaking, of course. Catherine  
7 Potter, spokeswoman for Calpine, was quoted by The  
8 Tracy Press on September 21st as saying the goal  
9 is to improve air quality, not worsen it. And I  
10 do agree with her.

11 However, there's the use of anhydrous  
12 ammonia which is more dangerous, of course, than  
13 aqueous ammonia. I'm concerned also that there  
14 hasn't been a study done on SO2 levels. And as  
15 far as I know, SO2, in combination with other  
16 chemicals, is a precursor to PM10 and PM2.5, which  
17 is ozone.

18 My biggest concern is the lack of  
19 mitigation by Calpine with the citizens of Tracy.  
20 Specifically CACKLE, Citizens for Clean Air and  
21 Legal Equality.

22 Catherine Potter, the spokeswoman for  
23 Calpine, could help us improve our air quality if  
24 she strongly encouraged her project manager to  
25 mitigate local air quality with the people of

1 Tracy. The mitigation with both Air Districts,  
2 the Bay Area and the San Joaquin Valley, seem to  
3 have satisfied both parties. However, I'm just  
4 strongly wanting to impress my point that the  
5 people of Tracy are not as satisfied with the  
6 outcome as the other two parties.

7 And I would just like to respectfully  
8 request that the staff and the Commission demand  
9 some type of additional mitigation in regards to  
10 air quality.

11 And that's it. Thank you very much for  
12 your time.

13 PRESIDING MEMBER KEESE: Thank you.

14 HEARING OFFICER WILLIAMS: Could you  
15 state your name?

16 MS. BUENAVISTA: I'm sorry, my name  
17 again.

18 HEARING OFFICER WILLIAMS: Yes.

19 MS. BUENAVISTA: Paula Buenavista, and  
20 Buenavista is B-u-e-n-a-v, as in Victor, -i-s-t-a.  
21 Thank you. I got the high sign over there.

22 HEARING OFFICER WILLIAMS: Okay, thank  
23 you.

24 PRESIDING MEMBER KEESE: Thank you.

25 COMMISSIONER PERNELL: Thank you.

1 (Off-the-record comments.)

2 HEARING OFFICER WILLIAMS: Mr. Sarvey,  
3 did you have any questions of staff's witnesses?

4 MR. SARVEY: Yeah, I have a couple quick  
5 ones.

6 HEARING OFFICER WILLIAMS: Okay. Why  
7 don't we do that, then.

8 MR. SARVEY: Okay, I'm going to hand  
9 these out all at once so we don't have to go  
10 through the process here.

11 (Pause.)

12 CROSS-EXAMINATION

13 BY MR. SARVEY:

14 Q In your cumulative air analysis do you  
15 identify the location and emissions of the Gateway  
16 project?

17 MR. NGO: Are you asking me, Bob?

18 MR. SARVEY: Yes, sir.

19 MR. NGO: Oh. No, we did not include  
20 the emission from the Gateway project because we  
21 didn't have that information early enough to do  
22 that analysis.

23 MR. SARVEY: I just want to identify  
24 that as exhibit 31 on my list.

25 HEARING OFFICER WILLIAMS: What was that

1       again, sir?

2               MR. SARVEY:  This was exhibit 31 on my  
3       list.  It's the Gateway EIR and the air quality  
4       emissions.

5               HEARING OFFICER WILLIAMS:  Then we'll  
6       remark it as your next in order.

7               MR. SARVEY:  In the summer of 2001 the  
8       staff requested that the East Altamont perform a  
9       cumulative air analysis for the project including  
10      Mountain House mobile sources.  Was the applicant  
11      cooperative in this respect?  In this request?

12              MR. NGO:  No, they didn't.

13              MR. SARVEY:  Okay.  Did staff appeal  
14      this to the Commission?

15              MR. NGO:  Yes, we did.

16              MR. SARVEY:  What was the Commission's  
17      response?  Did they make the applicant perform the  
18      time-consuming and expensive analysis?

19              MR. NGO:  I'm not sure I can repeat the  
20      exact quote, but if I say it wrong, please correct  
21      me.  My understanding was that because there are  
22      cumulative impact analysis done for all the  
23      project that can be used in conjunction with this  
24      project.  And that the Mountain House community  
25      was an area source that is not typically included



1 in cumulative impact analysis. And therefore, a  
2 cumulative impact analysis just for this project  
3 and the Mountain House is not necessary.

4 MR. SARVEY: Has the applicant  
5 subsequently performed this analysis?

6 MR. NGO: No.

7 MR. SARVEY: Are you familiar with the  
8 CEC Staff analysis done in the Tesla project?

9 MR. NGO: I read it, but very quick kind  
10 of like glance through. So I'm not sure I'd be  
11 able to say whether --

12 MR. SARVEY: I provided you with air  
13 quality table 15 from that analysis.

14 MR. NGO: On page 4.1-31?

15 MR. SARVEY: That's correct.

16 MR. NGO: Yes, I have it.

17 MR. SARVEY: Can you tell me what the  
18 PM10 24-hour project impact is?

19 MR. NGO: For the project?

20 MR. SARVEY: For the project as  
21 estimated by this table?

22 MR. NGO: Oh, it's the 10 mcg/cubic  
23 meter.

24 MR. SARVEY: Is that significant in  
25 terms of CEQA and other regulatory agencies?

1 MR. NGO: Yes.

2 MR. SARVEY: Can you tell me what the  
3 annual project impact is?

4 MR. NGO: 1.5 mcg/cubic meter.

5 MR. SARVEY: Is that significant for  
6 CEQA and other regulatory analyses?

7 MR. NGO: I wanted to say yes, but this  
8 one a little more complicated to answer. Because  
9 you have to look at various condition on the site.  
10 And it's all different. Sometime the criteria, it  
11 just the impact alone wouldn't be able to say  
12 where it is, the project is -- where it is a  
13 significant impact.

14 MR. SARVEY: The Tracy Hills and South  
15 Schulte project do not include mobile sources in  
16 their EIRs, is that correct?

17 MR. NGO: I believe so, they do not.

18 MR. SARVEY: Without the mitigation  
19 package you have requested in your conditions of  
20 certification will the project result in  
21 significant unmitigated environmental impact?

22 MR. NGO: Without our --

23 MR. SARVEY: Without your mitigation  
24 package.

25 MR. NGO: -- staff recommendation? Yes,

1 it would.

2 MR. SARVEY: Thank you.

3 HEARING OFFICER WILLIAMS: Ia that it,  
4 Mr. Sarvey?

5 MR. SARVEY: Yes, I'm done.

6 HEARING OFFICER WILLIAMS: Okay. Now,  
7 Mr. Boyd, I don't believe that we can allow you to  
8 ask questions of this witness because you were not  
9 here.

10 MR. BOYD: I was here for their whole --  
11 the whole time that they were testifying. The  
12 whole time I was here. I wasn't here for the  
13 staff --

14 HEARING OFFICER WILLIAMS: Okay, --

15 MR. BOYD: -- I mean for the applicant,  
16 but I didn't have any questions for them.

17 HEARING OFFICER WILLIAMS: Okay. How  
18 many questions do you have?

19 MR. BOYD: I have ten on air quality and  
20 one on public health.

21 HEARING OFFICER WILLIAMS: Okay, go  
22 ahead.

23 MR. BOYD: My questions are for Tuan.  
24 This is Mike Boyd, CARE.

25 CROSS-EXAMINATION

1 BY MR. BOYD:

2 Q Tuan, are you aware of the BACT analysis  
3 process?

4 MR. NGO: Yes, I am.

5 MR. BOYD: And to your personal  
6 knowledge is one of the criterias for determining  
7 BACT whether a proposed mitigation measure or  
8 technology that's being proposed to use for  
9 mitigation is approved in practice?

10 MR. NGO: Yes.

11 MR. BOYD: Okay. In this project the  
12 applicant will employ three General Electric new  
13 design frame 7F gas turbine generators in a three-  
14 on-one combined cycle power train.

15 Commission Staff found the developer can  
16 save substantial money in building the project  
17 compared to a more typical four-on-two combined  
18 cycle arrangement.

19 Is the proposed design of the facility  
20 approved in practice or experimental? In your  
21 opinion, your professional opinion.

22 MR. NGO: It's not, it's not approved --  
23 it's not in practice. This is something new.

24 MR. BOYD: New. So would you consider  
25 it experimental?

1           MR. NGO: Experimental, I have to  
2 clarify, okay.

3           MR. BOYD: Okay, that's fine, feel free.  
4 Take your time.

5           MR. NGO: Experimental mean you don't --  
6 you start out from scratch, from fresh, nothing.  
7 And then you try to find something.

8           This one, the pattern was there, the  
9 turbine was there, although it new. So I wouldn't  
10 be able to character this project as experimental.

11          MR. BOYD: Okay, that's fine. The  
12 Commission Staff's analysis found the potential  
13 for substantially increased emissions of criteria  
14 pollutants over those permitted by the Bay Area  
15 Air Quality Management District.

16          What do you propose be required in the  
17 conditions to achieve the Bay Area Air Quality  
18 Management District's permitted emission levels in  
19 practice?

20          MR. NGO: What would I --

21          MR. BOYD: What mitigation are you --

22          MR. NGO: Can you repeat the --

23          MR. BOYD: -- offering up that's going  
24 to make them able to meet the permitted -- their  
25 permitted emission levels? Since yours were

1 substantially different.

2 MR. NGO: Oh, oh, I see. Well, BACT, by  
3 the way, is an emission limit by definition.

4 MR. BOYD: Right.

5 MR. NGO: That's --

6 MR. BOYD: This is more of a CEQA  
7 question than a BACT question.

8 MR. NGO: Right. When normally for CEQA  
9 analysis we do not make a determination whether it  
10 is BACT. It's the job of the District.

11 MR. BOYD: Right.

12 MR. NGO: Okay?

13 MR. BOYD: I'm just asking --

14 MR. NGO: And we --

15 MR. BOYD: -- can they achieve -- can  
16 you give me specific examples of mitigation that  
17 you're proposing that's different from them that  
18 will lower the emission levels to what they're  
19 permitting? If you don't have any, that's fine,  
20 too.

21 MR. NGO: No, I don't think -- I think  
22 the SCR technology that they are propose is okay.

23 MR. BOYD: Okay.

24 MR. NGO: That they can achieve that 2  
25 ppm.

1 MR. BOYD: As they're proposing right  
2 now?

3 MR. NGO: As proposed, yes.

4 MR. BOYD: Okay. Did you have an  
5 opportunity to review CARE's SCONOX white paper  
6 that was prepared by Mike Mariscalco, P.E., of QUI  
7 Engineers. It was submitted on 9/17 as  
8 prehearing, filed prehearing testimony. And then  
9 again resubmitted as exhibit 4 of CARE's 10/1/02  
10 prehearing conference statement?

11 MR. NGO: I did.

12 MR. BOYD: Okay. How can you reconcile  
13 your failure to require SCONOX for this project  
14 with CEQA's foremost principle of maximizing  
15 environmental protection through feasible  
16 mitigation?

17 MR. NGO: Okay, I need to do a little  
18 bit more to answer your question. I need to talk  
19 a little bit here, okay, so --

20 MR. BOYD: Do you want me --

21 MR. NGO: -- bear with me.

22 MR. BOYD: -- to repeat it again?

23 MR. NGO: No, no, no, I understand your  
24 question.

25 MR. BOYD: Okay.

1 MR. NGO: First of all, I --

2 MR. BOYD: This is CEQA, only.

3 MR. NGO: Right, right, right. First of  
4 all, I like SCONOx. It is a new technology and a  
5 very promising. The only problem that I have with  
6 them is that they don't have the, my judgment, I  
7 don't believe that they would be able to be  
8 install on this project and achieve the level that  
9 we want them to do.

10 The major problem with it is the scaling  
11 factor. A lot of people say the scaling was no  
12 problem. But I beg to differ because I did look  
13 at the chemistry analysis for the -- reactor for  
14 this SCONOx. With a smaller system you have --  
15 the major thing, the main thing for the SCR to  
16 work, you need to have a sealed -- I try to say no  
17 air leak into the reactor. If you do you may not  
18 be able to get that level that you want.

19 Now, if SCONOx have some -- or some  
20 demonstration project on a larger scale turbine  
21 like this one, then I wouldn't hesitate to  
22 recommend that.

23 But on the other hand if we have -- we  
24 are just saying the 2 ppm is what we think the  
25 lowest emission. And we would want to leave it to



1 the applicant to choose whatever technology that  
2 they prefer to do the job right. Because sometime  
3 you have a certain experience with certain  
4 equipment, you might be able to operate it a  
5 little bit better. Just like when you buy a new  
6 boat, you don't know what you're doing, and then,  
7 you know, the boat --

8 PRESIDING MEMBER KEESE: Is that enough  
9 of an answer?

10 MR. BOYD: Certainly.

11 PRESIDING MEMBER KEESE: Okay.

12 MR. NGO: Okay.

13 PRESIDING MEMBER KEESE: We're going to  
14 still try to get out of here tonight.

15 MR. BOYD: That's fine.

16 Are you aware of that, that you can  
17 enhance that technology to achieve lower emission  
18 levels?

19 MR. NGO: I would imagine -- I'm not  
20 aware of that, but I do know for a fact that you  
21 increase the catalyst, and you modify, or not  
22 modify, but design the system for ammonia  
23 distribution per system so that you insure that  
24 the ammonia is not going to channel, and you have  
25 enough turbulence in the exhaust.

1 MR. BOYD: Right.

2 MR. NGO: You will get lower NOx  
3 emissions, you know.

4 MR. BOYD: So, could I rephrase that to  
5 say that there are methods -- are you aware that  
6 there are methods of enhancing the proposed  
7 emission controls to achieve higher emission  
8 control levels?

9 MR. NGO: There are, but it's not, as we  
10 are saying only that we want to be --

11 MR. BOYD: -- in practice?

12 MR. NGO: -- in practice, yes.

13 MR. BOYD: Okay, back to SCONOx, can you  
14 explain why SCONOx technology, which is approved  
15 in practice by the USEPA and the CEC, itself,  
16 approved it in the Otay Mesa project, is why it is  
17 not being required for this project, while the  
18 applicant is being allowed to use technology which  
19 in our opinion is, at best, experimental?

20 MR. NGO: Well, SCONOx, actual in  
21 practice have determined all that written, all  
22 that comment by the EPA and -- the federal EPA.  
23 In practice for the engine that are really small,  
24 again, again the issue here is that, I, myself, in  
25 my own judgment, does not believe SCONOx is ready

1 yet for this kind of, for this type of turbine,  
2 and that is the reason we did not recommend on the  
3 Otay Mesa Project.

4 I did not work on that project, but I  
5 understand that project was sited with SCONOX or  
6 SCR system.

7 MR. BOYD: That's correct.

8 MR. NGO: So, they do have a choice.

9 MR. BOYD: So, but it has been approved  
10 by the -- you understand that it has been approved  
11 by the Commission in that project, correct?

12 MR. NGO: Yes.

13 MR. BOYD: Okay. That's fine. Okay,  
14 now I have a more, I don't know -- are you aware  
15 of the delegation agreement between the Bay Area  
16 Air Quality Management District and the EPA Region  
17 IX? That they have a delegation agreement?

18 MR. NGO: Delegation of what?

19 MR. BOYD: Which requires the District  
20 to comply with the CEQA EIR requirements. Are you  
21 aware of that?

22 MR. NGO: I do not -- I'm not aware with  
23 that.

24 MR. BOYD: Okay.

25 MR. NGO: I mean I'm not familiar with

1       that.

2               MR. BOYD:  Okay, that's fine, I don't  
3       want to go any further with that.  That makes that  
4       real quick.

5               The FDOC has concluded that BACT for CO  
6       is an emission limit of 4 ppm, averaged over any  
7       rolling three-hour period achieved using an  
8       oxidation catalyst in good, quote, "good  
9       combustion controls."

10              Again, we believe that's a step in the  
11      right direction, but not in compliance with the  
12      Clean Air Act and CEQA.  This BACT determination  
13      suffers from the same problems as for NOx, namely  
14      improperly eliminates SCONox, the most effective  
15      control technology and fails to consider lower  
16      limits required in other permits.

17              And it fails to consider lower limits  
18      demonstrated by performance data.

19              COMMISSIONER PERNELL:  Excuse me.  Mr.  
20      Williams, --

21              MR. BOYD:  How do you -- here is my  
22      question --

23              (Laughter.)

24              MR. BOYD:  -- how do you reconcile the  
25      District's failure, the Bay Area Air Quality

1 District's failure to comply with the Clean Air  
2 Act's BACT requirement for CO, which in my  
3 understanding, was 2 ppm.

4 MR. WHEATLAND: I object, that's --

5 HEARING OFFICER WILLIAMS: Yeah, Mr.  
6 Boyd, you're drawing some legal conclusions.

7 MR. BOYD: That's a long -- too much of  
8 a mouthful?

9 HEARING OFFICER WILLIAMS: Yes. Much  
10 too much.

11 MR. BOYD: Okay. Just say you don't  
12 know, that makes it --

13 MR. NGO: I guess you have to better ask  
14 the District that question.

15 MR. BOYD: Okay, that's fine. Okay, I'm  
16 just looking here. The rest of -- I have like two  
17 more questions that I think might be appropriate  
18 for him, and then I'll save the rest for when the  
19 Air District comes up.

20 In regards to biological resources, the  
21 record contains substantial evidence of inadequacy  
22 of the Air District's approach, despite a detailed  
23 report --

24 HEARING OFFICER WILLIAMS: Mr. Boyd,  
25 you're testifying now.

1 MR. BOYD: Okay.

2 HEARING OFFICER WILLIAMS: You need to  
3 just ask him a question.

4 MR. BOYD: Okay.

5 PRESIDING MEMBER KEESE: About his  
6 testimony.

7 MR. BOYD: In your professional opinion,  
8 can it be said that the conditions of approval  
9 that are being proposed by the CEC and the Air  
10 District and the applicant insure that the East  
11 Altamont Energy Center will comply with all laws,  
12 ordinances, regulations and standards,  
13 particularly CEQA, the California Environmental  
14 Quality Act, the Federal Clean Air Act, and the  
15 Endangered Species Act?

16 MR. NGO: I --

17 MR. BOYD: This is your professional  
18 opinion. You made a statement about CEQA earlier,  
19 so I thought that would be appropriate for you.

20 MR. NGO: Right. For the Endangered  
21 Species Act, you know, I'm an absolute dummy on  
22 that one, I don't know anything about it.

23 MR. BOYD: Okay.

24 MR. NGO: And I know that in the past we  
25 have to just delay to EPA to answer that question.

1 MR. BOYD: Okay.

2 MR. NGO: So I'm going to disqualify  
3 myself from answer that question. But on  
4 everything else --

5 MR. BOYD: -- the Clean Air Act.

6 MR. NGO: -- yeah, Clean Air, whatever,  
7 with staff recommendation for mitigation, and the  
8 District condition, and everything else, yes, it  
9 would be -- it would comply with all the  
10 applicable law and regulation.

11 MR. BOYD: And with-- in the absence of  
12 that being adopted and approved, would that not be  
13 the case then?

14 MR. NGO: In the absence of what? The  
15 staff mitigation?

16 MR. BOYD: If they failed to adopt the  
17 mitigation that you're proposing.

18 MR. NGO: Then we --

19 MR. BOYD: Would that no longer comply  
20 with those requirements?

21 MR. NGO: Then I believe that we have an  
22 unmitigated significant impacts from the project.

23 MR. BOYD: Which is a CEQA  
24 determination, basically, correct?

25 MR. NGO: Pretty much, yes.

1 MR. BOYD: Okay, that's all my  
2 questions, thank you.

3 HEARING OFFICER WILLIAMS: Okay, thank  
4 you. We'll move now to San Joaquin Valley  
5 Unified --

6 MR. SWANEY: Thank you.

7 HEARING OFFICER WILLIAMS: -- Pollution  
8 Control District.

9 MR. SWANEY: This is Jim Swaney with the  
10 San Joaquin Valley Air District. I just have two  
11 questions for you.

12 The first, in your proposed condition of  
13 certification, AQ-SC-5 from the FSA, I believe  
14 you're aware -- well, first off, you've defined a  
15 qualified engine for inclusion in the mitigation  
16 that we will administer, my agency would  
17 administer, as being an engine whose operating  
18 base is in Alameda County.

19 And I believe you are aware that we are  
20 precluded from administering any funds outside of  
21 our geographical jurisdiction.

22 So my question is have you had a chance  
23 to revise this condition?

24 MR. NGO: Let me ask you to clarify the  
25 question. Your question is, do I know --



1           MR. SWANEY: No, my question is, have  
2           you had a chance to revise this condition to  
3           indicate that my agency cannot administer funds in  
4           Alameda County? Which would require  
5           administration by some other entity.

6           MR. NGO: No, you know, I haven't had a  
7           chance to do that, but --

8           MR. SWANEY: Okay, because I just wanted  
9           to make sure that the Commissioners understood  
10          that that is something that would have to change  
11          with that condition.

12          MR. NGO: Yes.

13          MR. SWANEY: That's the only reason for  
14          bringing it up.

15          MR. NGO: I understand.

16          MR. SWANEY: My next question is, during  
17          your testimony, when you were discussing the  
18          different mitigation strategies, you stated that  
19          the Energy Commission Staff has a different  
20          objective than either my agency or the Bay Area  
21          Air District, and I wanted you to clarify what you  
22          meant by us having different objectives.

23          MR. NGO: Your main objective is to make  
24          sure that the project that you issue complying  
25          with your own rule and regulation, the District

1 rule and regulation. And we look a little bit  
2 further more than that.

3 So we rely on the District -- I mean to  
4 summarize, we rely on the District -- on the  
5 determination that the project will comply with  
6 their own law. But the all rule and regulation  
7 like CEQA analysis, that we do have to do that  
8 analysis. So some time, I mean, that's where the  
9 different in the objectives.

10 MR. SWANEY: I should wait for my  
11 testimony to go against that, right?

12 PRESIDING MEMBER KEESE: I think so,  
13 yes.

14 MR. SWANEY: Okay, then, that's my  
15 questions. Thank you.

16 HEARING OFFICER WILLIAMS: Staff,  
17 redirect?

18 MS. DeCARLO: Yes, a couple.

19 REDIRECT EXAMINATION

20 BY MS. DeCARLO:

21 Q Can you please explain why you used the  
22 ozone relationship between Pittsburg and Tracy as  
23 representative of the PM10 relationship?

24 MR. NGO: As I mentioned earlier, PM10  
25 concentration in the Tracy area is lacking. We

1 don't have measurement data, so what I did was  
2 just do a simple analysis so that we can give the  
3 applicant the benefit of the doubt that their  
4 emission a little bit more effective in term of  
5 mitigate the project, rather than just using  
6 umbrella 27 percent from the Air Resources Board.

7 MS. DeCARLO: Do you have any indication  
8 that the Bay Area Air Quality Management District  
9 disagrees with staff's analysis?

10 MR. NGO: No, they do not.

11 MS. DeCARLO: Has the San Joaquin Valley  
12 Air Pollution Control District disagreed in  
13 writing or verbally with our analysis?

14 MR. NGO: No, they did not.

15 MS. DeCARLO: Is it your testimony that  
16 the relationship between Pittsburg, Antioch and  
17 Livermore discussed in the final staff assessment,  
18 is for effectiveness of the reductions and not  
19 necessarily just the emissions?

20 MR. NGO: Yes, that true.

21 MS. DeCARLO: Are you aware of any  
22 agencies that state that the East Altamont Energy  
23 Center will not cause a local ozone impact?

24 MR. NGO: No.

25 MS. DeCARLO: Is it your testimony that

1 the discussion about the East Altamont Energy  
2 Center and other power projects and new  
3 developments were to show that the region is  
4 experiencing considerable emissions growth, some  
5 of which is not offset?

6 MR. NGO: That's correct.

7 MS. DeCARLO: Would this growth improve  
8 air quality, or make air quality worse in the  
9 local area and region?

10 MR. NGO: Logically, it will make it  
11 worse.

12 MS. DeCARLO: Now awhile ago you were  
13 referenced by the applicant to page E7 of the  
14 FDOC. For which District does this conclusion  
15 apply?

16 MR. NGO: I believe it's for the Bay  
17 Area Air Quality Management District.

18 MS. DeCARLO: So it is not a conclusion  
19 made by the San Joaquin Valley Air Pollution  
20 Control District?

21 MR. NGO: No.

22 MS. DeCARLO: Are you aware of any  
23 analysis that San Joaquin Valley Air Pollution  
24 Control District has done to support the findings  
25 contained in their October letter?

1 MR. NGO: No.

2 MS. DeCARLO: Do you have any reason to  
3 believe that the California Air Resources Board  
4 would disagree with how staff has used the  
5 transport factor contained in their study?

6 MR. NGO: No.

7 MS. DeCARLO: Did any agency, aside from  
8 the California Energy Commission Staff, analyze  
9 the project's potential for environmental impacts?

10 MR. NGO: No.

11 MS. DeCARLO: Was the Bay Area Air  
12 Quality Management District's analysis limited  
13 solely to whether or not the East Altamont Energy  
14 Center conformed with Bay Area Air Quality  
15 Management District rules and regulations?

16 MR. NGO: Including -- they do that plus  
17 with the delegation of the PSD review from the  
18 federal EPA.

19 MS. DeCARLO: Which does not take into  
20 consideration state standards, is that correct?

21 MR. NGO: That how I believe it, yes.

22 MS. DeCARLO: Does the existence of the  
23 Tracy Gateway Project in any way change staff's  
24 conclusions regarding potential for impacts?

25 MR. NGO: No, it doesn't.

1 MS. DeCARLO: Is it your opinion that  
2 the condition AQC-5, which requires San Joaquin  
3 Valley Air Pollution Control District oversight,  
4 allows for such oversight over non-District  
5 territory with the inclusion of a citizen advisory  
6 panel?

7 MR. NGO: I believe so. We're working  
8 on it.

9 MS. DeCARLO: Can you go into it a  
10 little bit, explain that process?

11 MR. NGO: What we want to do -- normally  
12 if an engine on a truck -- a truck operator who  
13 operate in the San Joaquin valley, they normally  
14 go through the District. That is not a problem.  
15 The problem is that, say you have a truck operator  
16 who operate in the Alameda County side, say  
17 Livermore side, that we still allow, and the  
18 District will have some problem channeling the  
19 funds over there to them.

20 So what we are trying to do, we try to  
21 get the operator, the truck operator, or the  
22 agriculture operators to apply with the, an  
23 oversight group. And then that group apply  
24 directly to the District, which they channel the  
25 fund out of them for them to do that project. And

1       that's how they work. Just to make things simple.  
2       With our oversight, of course. I mean we will  
3       look into, we'll make sure that they not doing  
4       anything funny.

5               MS. DeCARLO: Do you have any more  
6       comments you would like to make in response to  
7       some of the assertions?

8               MR. NGO: I just have one real quick  
9       comment. My analysis. Okay, I just want to  
10      summarize my analysis. We found that the project  
11      will cause localized and regional impact to the  
12      area. And we found that the emission reduction  
13      credit from the Bay Area is not going to be  
14      effective in reducing or mitigating the impact to  
15      a level less than significant.

16              And therefore, we make that  
17      recommendation for the local mitigation just to  
18      make sure that those impact to be mitigate. And  
19      that's all I have to say.

20              HEARING OFFICER WILLIAMS: Staff, do you  
21      want to go ahead and sponsor the testimony of the  
22      Bay Area Air Quality Management District?

23              MS. DeCARLO: Yes.

24              HEARING OFFICER WILLIAMS: Why don't  
25      we --

1 MS. DeCARLO: Staff is sponsoring the  
2 testimony of --

3 HEARING OFFICER WILLIAMS: Mr. Boyd?

4 MR. BOYD: When she was doing the  
5 recross, she raised the issue that --

6 HEARING OFFICER WILLIAMS: Redirect.

7 MR. BOYD: Can I ask a question --

8 HEARING OFFICER WILLIAMS: Why don't we  
9 wait until we --

10 MR. BOYD: -- on the recross? It's on  
11 this -- she mentioned the delegation agreement,  
12 that I stopped asking my question about because at  
13 that time it was inappropriate, because it was --  
14 I was advised I should bring it up with the Air  
15 District. But then she turned around and asked  
16 him about it.

17 HEARING OFFICER WILLIAMS: All right, go  
18 ahead.

19 RECROSS-EXAMINATION

20 BY MR. BOYD:

21 Q I would just ask you quickly, are you  
22 aware that the delegation agreement between the  
23 Bay Area Air Quality Management District and EPA  
24 Region IX requires the District comply with the  
25 CEQA EIR requirement by reading and evaluating a



1 certified EIR or its functional equivalent before  
2 issuing a permit.

3 MR. NGO: No, I'm not aware. You know,  
4 I do have a problem when you say delegation, I do  
5 not know what delegation of what, so --

6 MR. BOYD: They delegate their PSD  
7 permitting authority, EPA delegates the --

8 MR. NGO: Oh, --

9 MR. BOYD: You weren't -- she was  
10 asking about the PSD --

11 MR. NGO: -- oh, I see.

12 MR. BOYD: -- permitting authority that  
13 was delegated. And that's what I was trying to  
14 ask you about, too.

15 MR. NGO: Oh, okay.

16 MR. BOYD: But I was just trying to ask  
17 you, do they have to review the EIR first before  
18 they issue --

19 MR. NGO: I do not aware of that they  
20 have that as one of the condition.

21 MR. BOYD: Okay.

22 HEARING OFFICER WILLIAMS: Okay, do  
23 you --

24 MS. DeCARLO: Yes, staff is sponsoring  
25 the testimony of Dennis Jang from the Bay Area Air

1 Quality Management District. And he needs to be  
2 sworn in.

3 Whereupon,

4 DENNIS JANG

5 was called as a witness herein, and after first  
6 having been duly sworn, was examined and testified  
7 as follows:

8 DIRECT EXAMINATION

9 BY MS. DeCARLO:

10 Q Can you please state your name for the  
11 record?

12 MR. JANG: Dennis Jang, J-a-n-g.

13 MS. DeCARLO: And what Agency do you  
14 work for?

15 MR. JANG: Bay Area Air Quality  
16 Management District.

17 MS. DeCARLO: And what are your duties?

18 MR. JANG: I evaluate permit  
19 applications for stationary sources of air  
20 pollution.

21 MS. DeCARLO: And did you review the  
22 East Altamont Energy Center?

23 MR. JANG: Yes, I did.

24 MS. DeCARLO: Can you please summarize  
25 the extent of your review and your conclusions you

1 arrived at?

2 MR. JANG: Well there are basically four  
3 main conclusions that we have to make in our  
4 determination of compliance. They've all been  
5 discussed earlier.

6 The first is the best available control  
7 technology, which this project satisfies. The  
8 second is emission offsets, and the applicant has  
9 identified sufficient offsets for this project.

10 The third thing is a toxic risk  
11 management policy, health risk screening, that we  
12 must execute to determine the impact on public  
13 health. The fourth thing is the PSD air quality  
14 impact analysis, where we model the emissions from  
15 the facility.

16 The basic conclusion of that is that the  
17 facility will not cause or contribute to any  
18 exceedence of any applicable air quality standard,  
19 ambient air quality standard, and that includes  
20 state and federal standards.

21 That's essentially what the  
22 determination of compliance concludes.

23 MS. DeCARLO: And does this conclusion,  
24 relate solely to the Bay Area Air Quality  
25 District, or is it also including the San Joaquin

1 Valley District?

2 MR. JANG: Our regulations do not  
3 address the San Joaquin District, so the answer is  
4 yes, it's only the Bay Area.

5 MS. DeCARLO: So it is your testimony  
6 that the Bay Area Air Quality Management District  
7 has not concluded that all air quality impacts are  
8 fully mitigated in the San Joaquin Valley, is that  
9 true?

10 MR. JANG: Right, we don't -- we really  
11 haven't -- we don't speak to that issue, is really  
12 the correct answer.

13 MS. DeCARLO: On page 2.1-11 of the  
14 applicant's testimony, I'll just rephrase here,  
15 the applicant stated that the Bay Area Air Quality  
16 Management District expressly addressed PM10  
17 impacts from the East Altamont Energy Center.

18 Is it your testimony that the Bay Area's  
19 conclusions address PM10 impacts in the San  
20 Joaquin Valley?

21 MR. JANG: Well, okay, we don't directly  
22 determine what those impacts are. We, when we're  
23 modeling the facility, we're trying to determine  
24 the point of maximum impact. And the point of  
25 maximum impact for all the pollutants of concern

1       were within the Bay Area District.

2               So, in the process of modeling to  
3       determine what those maximums were, we looked at  
4       impacts in San Joaquin, but it did not really play  
5       a part in the analysis because we were only  
6       interested in maximum impacts.

7               MS. DeCARLO:   Okay, thank you.

8               HEARING OFFICER WILLIAMS:   Applicant, do  
9       you have questions?

10              MR. WHEATLAND:   Yes, I have one  
11       question.

12              HEARING OFFICER WILLIAMS:   Okay.

13                               CROSS-EXAMINATION

14       BY MR. WHEATLAND:

15              Q       Did the Bay Area Air Quality Management  
16       District's review of this project take into  
17       account both state and federal air quality  
18       standards?

19              MR. JANG:   Yes, it did.

20              MR. WHEATLAND:   Thank you.

21              HEARING OFFICER WILLIAMS:   Okay.   Mr.  
22       Sarvey.

23              MR. SARVEY:   Yeah, I have several  
24       questions.   I just want to hand out the exhibits,  
25       and make it go a little quicker.

## CROSS-EXAMINATION

BY MR. SARVEY:

Q Thanks for coming, Mr. Jang.

Did you require any offsets for emission of SO2 in your offset package?

MR. JANG: No.

MR. SARVEY: Did you require any offsets for PM10 emissions from the cooling towers?

MR. JANG: Yes.

MR. SARVEY: Did you require the applicant to model PM10 emissions from the cooling tower in arriving at maximum impacts from PM10?

MR. JANG: Yes, we did.

MR. SARVEY: Are you also involved with the Tesla Project?

MR. JANG: Yes.

MR. SARVEY: Have you seen their comments on the PDOC from the EPA?

MR. JANG: Whose comments?

MR. SARVEY: Have you seen the comments on yours -- excuse me, on your preliminary determine of compliance from the EPA?

MR. JANG: Oh, on Tesla?

MR. SARVEY: Yes.

MR. JANG: Yes.

1           MR. SARVEY: Okay, thank you. Is the  
2 Bay Area Air Quality Management District in  
3 violation federal ozone standards or any PM10 or  
4 PM2.5 federal standard?

5           MR. JANG: The PM10 were not; I'm not  
6 sure about the ozone, whether the -- what our  
7 current status is. We've had -- it depends on the  
8 weather.

9           (Laughter.)

10          MR. SARVEY: Okay. Did the applicant  
11 receive credit for banking certificate 716 for  
12 POCs that were created in 1981?

13          MR. JANG: Yes.

14          MR. SARVEY: Did the applicant receive  
15 credit for banking certificate 602 for 40.970 tons  
16 per year of POCs created in 1987?

17          MR. JANG: Yes.

18          MR. SARVEY: Has the EPA commented to  
19 you in your comments on your PDOC for the Tesla  
20 Project about using pre-1990 credits?

21          MR. JANG: Yes.

22          MR. SARVEY: Are you familiar with the  
23 EPA's guidelines on use of pre-1990 credits?

24          MR. JANG: Yes.

25          MR. SARVEY: According to those

1 guidelines, should the applicant have received  
2 credit for those two banking certificates, 716 and  
3 602?

4 MR. JANG: Yeah, we did -- adjust those  
5 at time of deposit; and I think the issue has to  
6 do with whether we count those reductions in our  
7 clean air plan, and that's -- I think EPA  
8 understands that we are in compliance with their  
9 policy.

10 I don't know -- they bring this up quite  
11 often.

12 MR. SARVEY: When was your latest clean  
13 air plan published?

14 MR. JANG: I don't remember. I'd have  
15 to look it up. I don't really have to refer to  
16 that too often.

17 (Pause.)

18 PRESIDING MEMBER KEESE: Mr. Sarvey.

19 MR. SARVEY: In the applicant's revision  
20 of its PM10 emissions for the PDOC, did the  
21 applicant provide you with any vendor guarantees  
22 or source tests on equipment that he will be using  
23 in this project, specifically the GE7B frame  
24 turbine?

25 MR. JANG: I believe the source test



1 data was for -- I believe it was for other GE  
2 turbines, but not the, I'm not sure if it was a  
3 particular model that this proposed for this.

4 MR. SARVEY: So you've been provided  
5 with no information as far as the emission  
6 calculations on the GE7? FB?

7 MR. JANG: Well, there hasn't been any  
8 source test data on that specific model.

9 MR. SARVEY: Thank you. Did the  
10 applicant inform you that the sulfur content in  
11 the fuel used in the Sutter Power Plant source  
12 tests contained only .18 grains per 100 SCF, and  
13 that the pipeline-grade gas used in this project  
14 is expected to contain .27 grains 100 SCF?

15 MR. JANG: No.

16 MR. SARVEY: Would that affect your  
17 conclusions as to the results of the source tests  
18 that you received?

19 MR. JANG: We could -- it depends. We  
20 could change the emission rate proportional to the  
21 sulfur content, and if there is still enough  
22 significant margin between that rate and the  
23 assumed rate in the permit, that still wouldn't be  
24 an issue.

25 MR. SARVEY: So is there any emissions

1       that you would specifically identify as going up,  
2       related to those calculations that I just gave  
3       you?

4               MR. JANG:  Well, it depends, if you  
5       assume that all the sulfur converts to secondary  
6       PM10, that might affect your PM10 emission rate.

7               MR. SARVEY:  Okay.  Did you require any  
8       offsets for ammonia emissions from the East  
9       Altamont Energy Center?

10              MR. JANG:  No.

11              MR. SARVEY:  Did you provide any  
12       estimates as secondary PM2.5 emissions formed from  
13       the ammonia slip?

14              MR. JANG:  No.

15              MR. SARVEY:  Why?

16              MR. JANG:  We -- in general, our  
17       regulations only address directly emitted  
18       pollutants.

19              MR. SARVEY:  So, your statement is that  
20       the Bay Area doesn't require any estimates or any  
21       offsets for secondary PM2.5 emissions from ammonia  
22       slip?

23              MR. JANG:  No, we don't.

24              MR. SARVEY:  So, why are you requiring  
25       the applicant -- or why are you not requiring the

1 applicant to adhere to the CARB and EPA ammonia  
2 slip of 5 ppm?

3 MR. JANG: Because our priority reasons  
4 for regulating ammonia have to do with the  
5 potential health impacts, the potential secondary  
6 PM10 formation. As I mentioned, we don't consider  
7 that; it's not addressed in our regulations.

8 MR. SARVEY: So, what's the purpose of  
9 the higher ammonia slip limit, in your opinion?

10 MR. JANG: It would help them comply  
11 with the lower NOx limit, and it would probably  
12 extend the life of the catalyst.

13 MR. SARVEY: So your testimony is that  
14 it would lower their NOx, and you're a little more  
15 concerned about their NOx than you are their  
16 ammonia slip, is that correct?

17 MR. JANG: Well, we're concerned with  
18 them meeting their NOx limits on a consistent  
19 ongoing basis.

20 MR. SARVEY: Okay. Aren't all the NOx  
21 in their project required to be offset?

22 MR. JANG: Yes.

23 MR. SARVEY: Again, are you requiring  
24 any offsets for the secondary formation of PM2.5  
25 from the ammonia slip?

1 MR. JANG: No.

2 MR. SARVEY: Well, since the NOx ERCs  
3 are required, and the ammonia PM2.5 ERCs are not  
4 required, wouldn't air quality be improved by  
5 limiting ammonia slip to 5 ppm?

6 MR. JANG: You can make the general  
7 statement that it would, but our regulations don't  
8 give us that authority.

9 MR. SARVEY: Thank you. How many tons  
10 per year of ammonia is this facility allowed to  
11 emit?

12 PRESIDING MEMBER KEESE: Mr. Sarvey, --

13 MR. JANG: Didn't somebody --

14 PRESIDING MEMBER KEESE: -- you know, I  
15 think he has indicated that they don't deal with  
16 ammonia.

17 MR. SARVEY: Okay, sorry, Chairman.

18 PRESIDING MEMBER KEESE: Twice, two or  
19 three times.

20 MR. SARVEY: I'm sorry, Chairman. I  
21 apologize.

22 Have you disallowed the road paving  
23 credits that the Tesla Project is trying to use?

24 MR. JANG: No.

25 MR. SARVEY: The CEC is the lead agency

1 in this project and they're required to evaluate  
2 the project under CEQA, is that correct?

3 MR. JANG: Yes, that's my understanding.

4 MR. SARVEY: Thank you very much. I'm  
5 done.

6 HEARING OFFICER WILLIAMS: Mr. Boyd.

7 CROSS-EXAMINATION

8 BY MR. BOYD:

9 Q Hey, Dennis, we meet them again. Some  
10 of these questions that I have I'll try to make a  
11 little briefer since I already asked them and you  
12 heard the comments from Tuan when I was asking.

13 So, first I'll start with the question,  
14 a follow up on Bob. Is the Air District a agency  
15 subject to the requirements of CEQA, as well?

16 MR. JANG: We have, yes, we have CEQA  
17 regulations in our rules.

18 MR. BOYD: Okay. As I was telling --  
19 asking Tuan the applicant's proposing, and as Bob  
20 alluded to, this new design frame 7B, they're also  
21 proposing a new configuration, three-to-one, as  
22 opposed to a two-to-one combined cycle train.

23 In your professional opinion, is the  
24 proposed design of the facility approved in  
25 practice, or is it experimental?

1           MR. JANG: I haven't seen that  
2 configuration before, but then that doesn't mean  
3 that it doesn't exist elsewhere. I don't --

4           MR. BOYD: You don't know.

5           MR. JANG: I don't know. I would not  
6 characterize it as experimental.

7           MR. BOYD: Okay, thank you. Commission  
8 Staff analysis found a potential for, and that's  
9 the key thing for CEQA, for substantially  
10 increased emissions of criteria pollutants over  
11 those permitted by the District.

12           What do you proposed be required as  
13 conditions to achieve the permitted emission  
14 levels in practice that you're proposing, in light  
15 of that, in light of the fact that they found more  
16 potential emissions?

17           MR. JANG: Well, we enforce our limits,  
18 you know. They have -- if you're talking about  
19 nitrogen oxides and carbon monoxide we have  
20 continuous emission monitors that will be  
21 recording the emissions. And our inspectors will  
22 go out and look at them. We will receive those  
23 reports quarterly, so --

24           MR. BOYD: So if they exceed --

25           MR. JANG: -- they'll have an ongoing --

1 (Parties speaking simultaneously.)

2 MR. BOYD: -- their permitted level,  
3 you're going to have to do some corrective action  
4 or something, is what you're saying?

5 MR. JANG: That's correct.

6 MR. BOYD: Now did you have an  
7 opportunity to review this report on the SCONOx  
8 white paper? Did you get a chance to see this?  
9 It was submitted -- this is a more recent report  
10 from the Alston report that you guys were citing  
11 in here.

12 MR. JANG: No, I haven't.

13 MR. BOYD: Okay, so I won't ask you  
14 about that; that saves the questions.

15 Can you explain why SCONOx, a technology  
16 proved in practice by USEPA and the --

17 COMMISSIONER PERNELL: Mr. Boyd, you're  
18 going to have to get closer to the mike.

19 MR. BOYD: Okay, sorry.

20 PRESIDING MEMBER KEESE: I see our --  
21 when you're doing that, to help her out there,  
22 she's --

23 MR. BOYD: Okay, can you explain why  
24 SCONOx, a technology approved in practice by USEPA  
25 and the CEC, itself, in the Otay Mesa project, is

1 not being required for this project?

2 MR. WHEATLAND: I'm going to object to  
3 the question. I don't believe Otay Mesa is even  
4 within the jurisdiction of the Bay Area District.

5 HEARING OFFICER WILLIAMS: Sustained.

6 MR. BOYD: That still leaves it at the  
7 EPA. USEPA? I mentioned them as well. I said  
8 that technology is approved in practice --

9 PRESIDING MEMBER KEESE: Are you asking  
10 his opinion as to why the staff decided SCONox was  
11 not appropriate?

12 MR. BOYD: Well, the District performed  
13 their own independent BACT analysis where they  
14 examined SCONox in comparison to SCR.

15 PRESIDING MEMBER KEESE: Okay.

16 MR. BOYD: So, I'm basically asking him  
17 to summarize why they didn't pick SCONox.

18 PRESIDING MEMBER KEESE: Okay.

19 MR. BOYD: You can be brief.

20 MR. JANG: Well, it's the same issue  
21 that has been discussed before. It's the scale of  
22 feasibility. And based upon the study that was  
23 submitted to me in the Metcalf case, and that, as  
24 far as I know, has not changed, it still has not  
25 been demonstrated.



1           MR. BOYD: The delegation agreement  
2 between the Air District and the EPA requires the  
3 District to comply with CEQA, a CEQA EIR  
4 requirement, by reading and evaluating a certified  
5 EIR or its functional equivalent before issuing a  
6 permit.

7           Has the District had an opportunity to  
8 review a CEQA-equivalent document from the Energy  
9 Commission yet? And did you do so prior to  
10 issuing your determination of compliance? Yes or  
11 no?

12          MR. JANG: No.

13          MR. BOYD: Okay, thank you. The FDOC  
14 concluded that BACT for CO is an emission limit of  
15 4 ppm average over any three-hour period, achieved  
16 using oxidation catalyst and good combustion  
17 controls.

18          How do you -- okay, again, we believe  
19 this isn't in compliance with the Clean Air Act  
20 and CEQA. How do you reconcile the District's  
21 failure to comply with the Clean Air BACT  
22 requirements for CO?

23          And my understanding, and I may be wrong  
24 in this, my understanding is that the new BACT for  
25 CO is 2 ppm and not 4 ppm. And I'm willing to

1 stand corrected on that if that's the case.

2 EPA's BACT requirements for CO, you're  
3 only proposing 4, and my understanding is it  
4 should be 2.

5 MR. JANG: Right. Well, BACT is when  
6 you compel someone to meet a BACT emission rate,  
7 it must be achieved in practice. The 2 ppm limit,  
8 I'm not familiar with that limit, it may be based  
9 upon a permit --

10 MR. BOYD: It's based on SCONOX.

11 MR. JANG: -- for a facility that has  
12 not yet been operated. So, as far as we're  
13 concerned, the 4 is what's been achieved.

14 MR. BOYD: Okay, now, in issuing a PSD  
15 permit and authority to construct, should the  
16 District afford CARE, Intervenor CARE, an  
17 opportunity to appeal the matter before the  
18 District's Hearing Board, as was afforded in the  
19 MEC project, and if not, why?

20 HEARING OFFICER WILLIAMS: Mr. Boyd, I  
21 don't think that's an appropriate question here.

22 MR. BOYD: I'm asking about their  
23 process for -- I mean I can, I know, I understand  
24 the --

25 PRESIDING MEMBER KEESE: Are you cross-

1 examining him?

2 MR. BOYD: Yeah, I'm asking him --

3 PRESIDING MEMBER KEESE: -- on his  
4 testimony?

5 MR. BOYD: I'm asking him is --

6 PRESIDING MEMBER KEESE: On his  
7 testimony.

8 MR. BOYD: -- can we appeal, can we  
9 appeal it. Okay.

10 PRESIDING MEMBER KEESE: On his  
11 testimony.

12 MR. BOYD: Okay, that's fine. Now,  
13 before I ask him this other question, is he a  
14 witness on -- also a witness for you on public  
15 health, since they prepared the health risk  
16 assessment for this project?

17 MS. DeCARLO: No, he's neither a witness  
18 for us in air quality; we're just sponsoring his  
19 testimony.

20 MR. BOYD: Are you planning on  
21 sponsoring him for public health, as well?

22 MS. DeCARLO: No, we have our own  
23 analyst for public health.

24 MR. BOYD: And where would be the  
25 appropriate time for me to ask him about public

1 health and the health risk assessment. Is it  
2 okay --

3 PRESIDING MEMBER KEESE: The next.

4 HEARING OFFICER WILLIAMS: The next.

5 PRESIDING MEMBER KEESE: As soon as we  
6 are done with this.

7 MR. BOYD: This will be my final  
8 question.

9 PRESIDING MEMBER KEESE: Okay. On his  
10 testimony.

11 MR. BOYD: On his testimony.

12 PRESIDING MEMBER KEESE: On what he  
13 said.

14 MR. BOYD: Okay. You said that you are  
15 a CEQA agency right? Did you perform any kind of  
16 CEQA analysis as part of your determination of  
17 compliance on the project, specifically related to  
18 health risk?

19 MR. JANG: I'm not sure what you're  
20 getting at. I don't --

21 MR. BOYD: Well, I'm just trying to find  
22 out if you did the analysis, and my follow-up  
23 question was going to be, are you aware of what's  
24 called the precautionary principle, which is when  
25 an activity raises a threat of harm to human

1 health or the environment, precautionary measures  
2 should be taken, even if some cause-and-effect  
3 relationships are not fully established  
4 scientifically.

5 HEARING OFFICER WILLIAMS: Mr. Boyd, I  
6 think that's outside the scope of his testimony.

7 MR. BOYD: The mitigation proposed --  
8 there is different ways of determining how you  
9 propose the mitigation. You can do it on a  
10 baseline, like they're doing, you know. We have  
11 this limit that we have to meet. And then there  
12 is this precautionary principle. Dr. Smallwood  
13 spoke about it the other day. He referred to it  
14 as the uncertainty principle, --

15 PRESIDING MEMBER KEESE: You're  
16 asking him if he's --

17 MR. BOYD: -- and it has to do with the  
18 risk assessment.

19 PRESIDING MEMBER KEESE: You're asking  
20 him if he's familiar --

21 MR. BOYD: I'm asking him about risk,  
22 their risk assessment.

23 PRESIDING MEMBER KEESE: -- familiar  
24 with that principle, and I think the answer is?

25 MR. JANG: No, I'm not familiar with

1       that.

2               MR. BOYD:  Okay, that's all I need,  
3       thank you.  I'm all done, thank you.

4               HEARING OFFICER WILLIAMS:  Staff, do you  
5       have any --

6               MS. DeCARLO:  Some redirect.

7               HEARING OFFICER WILLIAMS:  -- redirect?

8               MS. DeCARLO:  Do you have any thresholds  
9       below --

10              HEARING OFFICER WILLIAMS:  Wait a  
11       second.  Before you do that, Mr. --

12              MR. WHEATLAND:  I have no questions for  
13       Mr. Jang.

14              HEARING OFFICER WILLIAMS:  Okay.

15              (Laughter.)

16              HEARING OFFICER WILLIAMS:  Staff,  
17       redirect.

18              MS. DeCARLO:  Yes.

19                       REDIRECT EXAMINATION

20       BY MS. DeCARLO:

21              Q     Do you have any thresholds below which  
22       impacts do not have to be mitigated?

23              MR. JANG:  Below which offsets are not  
24       required?

25              MS. DeCARLO:  Yes.

1 MR. JANG: Yes. It's 15 tons per year.  
2 That would be for any pollutant for which offsets  
3 are required.

4 MS. DeCARLO: Now given these  
5 thresholds, how can you then conclude that the  
6 East Altamont Energy Center has fully mitigated  
7 all potential impacts?

8 MR. WHEATLAND: I object to the  
9 question. It assumes that full mitigation is the  
10 standard.

11 MS. DeCARLO: Let me rephrase. How can  
12 you then conclude that all project impacts have  
13 been mitigated, given these thresholds?

14 MR. WHEATLAND: Again, I object, it  
15 assumes that all project impacts have to be  
16 mitigated.

17 MS. DeCARLO: There are certain  
18 conclusions contained in the FDOC that speak to  
19 mitigation. Hold on a bit.

20 (Pause.)

21 MS. DeCARLO: Let me rephrase. So,  
22 given these thresholds, is it your testimony that  
23 project impacts are mitigated?

24 MR. JANG: Yes, but I need to try to  
25 clear up a -- mitigation from the District

1 perspective is different from mitigation, I think,  
2 under CEQA with regard to the type of work that  
3 the Energy Commission does.

4 So we have these offset provisions that  
5 we require offsets for certain emission levels,  
6 and we call that mitigation. It's not the same as  
7 mitigating the impacts of a project to  
8 insignificance under CEQA.

9 MS. DeCARLO: Great, thank you very  
10 much. That's all staff has.

11 HEARING OFFICER WILLIAMS: Applicant?

12 MR. WHEATLAND: Just one question.

13 RECROSS-EXAMINATION

14 BY MR. WHEATLAND:

15 Q Mr. Jang, do you have a correction on  
16 page E1 of the FDOC? Is there a typographical  
17 correction, or a wording change that you wanted to  
18 correct?

19 MR. JANG: Oh, yes there is. At page  
20 E1, the sentence --

21 MR. WHEATLAND: -- the last sentence?

22 MR. JANG: The last full sentence, the  
23 table shows that the NO2, CO, and PM10 ambient  
24 impacts from the project all exceed the  
25 significance level and must be modeled. The



1 ambient impacts should be emissions.

2 HEARING OFFICER WILLIAMS: What page  
3 again is that? What is the correction?

4 MR. JANG: Page E1 of the FDOC.

5 MR. WHEATLAND: In the last sentence,  
6 the phrase, ambient impacts should read emissions.

7 COMMISSIONER PERNELL: So you're  
8 deleting ambient impacts, and inserting emissions?  
9 I'm not following what the correction --

10 MR. JANG: Yeah, it's basically a  
11 typographical error in the sense that they should  
12 have written emission rates. They were thinking  
13 impacts when they should have written emissions.  
14 So, it's not a -- it doesn't change any of the  
15 conclusions or any of the substantive conclusions.

16 COMMISSIONER PERNELL: Right, I was just  
17 trying to understand the strikeout and the --

18 MR. JANG: Right, the two words, ambient  
19 impacts, should be replaced by one, emissions.

20 COMMISSIONER PERNELL: Right, okay, got  
21 it.

22 MR. WHEATLAND: Thank you, that's the  
23 only question I had.

24 HEARING OFFICER WILLIAMS: Okay, at this  
25 point -- yeah, I think we're done with the

1 questioning of this witness.

2 MS. DeCARLO: I'm sorry, I don't see the  
3 FDOC is marked on the exhibit list. If we could  
4 potentially mark it and enter it into evidence.

5 HEARING OFFICER WILLIAMS: It's part of  
6 applicant's --

7 MS. DeCARLO: I see the PDOC on the  
8 applicant's list, but I didn't see the FDOC.

9 HEARING OFFICER WILLIAMS: We'll make it  
10 2Y-1. Okay, I think then, with that --

11 PRESIDING MEMBER KEESE: Let me ask one  
12 question. In your analysis, you look at the power  
13 plant and you get offsets for all the emissions,  
14 for the emissions that come out, nitrous oxide?

15 MR. JANG: Not all of them, but, yes,  
16 for the ones that trigger the offsets.

17 PRESIDING MEMBER KEESE: Right, for the  
18 ones that trigger the offsets, you get them.  
19 Staff was talking earlier that in their analysis  
20 only 27 percent of these should be -- under one  
21 scenario, only 27 percent of these should be  
22 eligible and have an impact. Is that -- that's  
23 not something you look at? You just --

24 MR. JANG: That's correct. We don't  
25 look at -- transport is not -- if that's what

1       you're --

2               PRESIDING MEMBER KEESE:   Right.

3               MR. JANG:   -- looking at.   Transport is  
4       not an issue.

5               PRESIDING MEMBER KEESE:   You don't look  
6       at the transport issue, you look at --

7               MR. JANG:   No.

8               PRESIDING MEMBER KEESE:   -- at the  
9       overall offset?

10              MR. JANG:   Right, we don't believe in  
11       transport.

12              PRESIDING MEMBER KEESE:   Okay.

13       (Laughter.)

14              PRESIDING MEMBER KEESE:   That clarifies  
15       that issue very clearly.   Thank you.

16              HEARING OFFICER WILLIAMS:   Okay, I think  
17       we ought to move on to San Joaquin now, and your  
18       presentation.

19              MR. SWANEY:   What I would like to do at  
20       this time is -- earlier the applicant referred to  
21       a October 10th letter from my agency, and I just  
22       wanted to read into testimony a portion of that  
23       letter which describes our position on this  
24       project.

25              HEARING OFFICER WILLIAMS:   Okay, we need

1 to swear him.

2 Whereupon,

3 JIM SWANEY

4 was called as a witness herein, and after first  
5 having been duly sworn, was examined and testified  
6 as follows:

7 DIRECT TESTIMONY

8 MR. SWANEY: With compliance with the  
9 conditions in the project's final determination of  
10 compliance, and the implementation of the  
11 applicant's air quality mitigation settlement  
12 agreement with the Valley District, we believe  
13 that the East Altamont Energy Center Project will  
14 not result in significant unmitigated air quality  
15 impacts in the San Joaquin Valley air basin.

16 The mitigation agreement provides funds  
17 that will be used to implement specific programs  
18 that create real air quality benefits within the  
19 District.

20 These programs will be selected based  
21 upon the effectiveness and cost effectiveness of  
22 the measures, and the District will give  
23 preference to cost effective programs in or near  
24 the City of Tracy, San Joaquin County, and the  
25 northern region of the air basin, in that order.

1           In fact, the District plans to begin  
2       dialogue with agencies and entities in the Tracy  
3       area and the northern region of the valley that  
4       may be in a position to sponsor emission reduction  
5       projects shortly after CEC approval of the East  
6       Altamont Energy Center project, and well ahead of  
7       projected timeframe for receipt and expenditure of  
8       the mitigation funds.

9           The goal will be to assist interested  
10      parties in designing emission reductions that will  
11      be most effective in reducing air emissions.

12          The District will solicit proposals to  
13      fund specific emission control programs in  
14      accordance with standard District practices. This  
15      effort is a public process.

16          The District will welcome timely input  
17      from any local community advisory committee that  
18      may choose to review the proposals submitted for  
19      the East Altamont Energy Center mitigation funds.  
20      And the District will consider the recommendations  
21      of all interested parties regarding these  
22      proposals prior to making a final selection.

23          Now the last thing that I did want to  
24      state here is my understanding of, this goes back  
25      to what Mr. Ngo had stated earlier -- my

1 understanding of my agency's objective, also the  
2 Bay Area District's objective, and the Energy  
3 Commission Staff in air quality is to protect  
4 human health.

5 Mr. Ngo seems to be implying that simply  
6 because we have different methodologies, some of  
7 us are not doing our jobs. But, I will submit to  
8 you that we all have the same objective, which is  
9 to protect human health. We just have different  
10 ways of going about it.

11 Thank you.

12 HEARING OFFICER WILLIAMS: Is that  
13 letter the same one that we've identified as  
14 applicant's exhibit 4G-1?

15 MR. WHEATLAND: Yes, it is.

16 MR. SWANEY: Yes.

17 HEARING OFFICER WILLIAMS: Okay, and  
18 that's dated October 10th?

19 MR. SWANEY: Yes.

20 HEARING OFFICER WILLIAMS: Staff.

21 MS. DeCARLO: Yes, a couple of cross-  
22 examination questions.

23 CROSS-EXAMINATION

24 BY MS. DeCARLO:

25 Q What was the extent of your

1 environmental review of the East Altamont Energy  
2 Center?

3 MR. SWANEY: From the time that we  
4 received a copy of the AFC I have been reviewing  
5 all information submitted to us. We have  
6 submitted comments to the Energy Commission at  
7 various times. Additionally we did comment on the  
8 Bay Area's PDOC.

9 Our level of review of this project has  
10 been functionally equivalent as if the project  
11 were located within our jurisdiction. We simply  
12 have not prepared a full evaluation report like  
13 we've done with other projects. We did not  
14 prepare anything close to a DOC.

15 MS. DeCARLO: Would you say that the  
16 extent of your analysis is less than what you  
17 would do with a full permit application?

18 MR. SWANEY: It would be slightly less  
19 in the fact that we did not perform our own health  
20 risk assessment.

21 MS. DeCARLO: And you did not publish  
22 any analysis that was subject to any review by the  
23 Air Resources Board or USEPA, is that correct?

24 MR. SWANEY: That would be correct.  
25 That would be a requirement for the Bay Area to

1 fulfill.

2 MS. DeCARLO: Are you familiar with the  
3 settlement agreement between Tesla and your  
4 agency?

5 MR. SWANEY: Yes.

6 MS. DeCARLO: Did that settlement  
7 agreement contain a transport factor of 27 percent  
8 for some of the emission reduction credits?

9 MR. SWANEY: As an entirely different  
10 methodology for determining what the mitigation  
11 was, yes, that number was used.

12 MS. DeCARLO: And can you please explain  
13 what the basis was for your deviation from that  
14 methodology for this instance?

15 MR. SWANEY: They simply have -- we came  
16 to a different agreement on what methodology  
17 should be used with this agreement.

18 MS. DeCARLO: So are you testifying that  
19 your methodology in the Tesla case is an incorrect  
20 methodology?

21 MR. SWANEY: No, --

22 MR. WHEATLAND: I object to --

23 MR. SWANEY: -- we're not saying any  
24 such thing. They are two different methodologies.  
25 They achieve the same result.



1 MS. DeCARLO: You believe the  
2 methodology used in the Tesla case is inapplicable  
3 to this instance?

4 MR. SWANEY: I do not. And, as a matter  
5 of fact, I ran the East Altamont numbers using the  
6 Tesla methodology and came up to almost the  
7 identical same result.

8 MS. DeCARLO: And do you have those  
9 numbers with you today?

10 MR. SWANEY: Yes. Using the methodology  
11 contained within the agreement with East Altamont,  
12 we identified a total of 66.8 tons per year to be  
13 mitigated.

14 Using the methodology as applied in the  
15 Tesla agreement resulted in 64.6 tons per year to  
16 be mitigated. Just slightly less.

17 MS. DeCARLO: And was this using the  
18 transport factor, as identified in the Tesla  
19 agreement, and additionally those identified on  
20 the San Joaquin Valley Air Pollution Control  
21 District website?

22 MR. SWANEY: What factors are you  
23 referring to our website?

24 MS. DeCARLO: There's -- the website  
25 contains factors for 20 percent -- 27 percent

1 effect of Bay Area emissions in northern San  
2 Joaquin Valley, 11 percent effect of Bay Area  
3 emissions in Central San Joaquin Valley, and a 9  
4 percent effect of Bay Area emissions on southern  
5 San Joaquin County.

6 MR. SWANEY: We use the same 27 percent  
7 transport factor as was used in the Tesla  
8 agreement.

9 MS. DeCARLO: For all of the emission  
10 reduction credits provided by the applicant, or  
11 just those contained, provided from the Antioch/  
12 Pittsburg area?

13 MR. SWANEY: When you look at the  
14 agreement with Tesla it states that we would use  
15 the 27 percent transport factor for reductions  
16 located on the Bay Area side of the Altamont Pass.

17 And for reductions that occurred on the  
18 Valley side of the Altamont Pass, then we would  
19 use the predominant wind flow data.

20 And all of the credits that East  
21 Altamont has proposed are on the Bay Area side, so  
22 the 27 percent was used for all of those.

23 MS. DeCARLO: Could you provide your  
24 calculations for our review by any chance?

25 MR. SWANEY: I can email you something

1 later.

2 MS. DeCARLO: Okay, that'd be great.

3 MR. WHEATLAND: What did you request?

4 MS. DeCARLO: The calculations he used  
5 for -- he referred to for the analysis of the  
6 methodology used in the Tesla as applies to this  
7 process, this project.

8 HEARING OFFICER WILLIAMS: Would you  
9 make sure to file those? Or someone from staff,  
10 would you make sure that those are docketed once  
11 you receive it?

12 MS. DeCARLO: Oh, I'm sorry. Yes, we  
13 will make sure that those are docketed. And we  
14 would request that the records remain open so that  
15 we could --

16 MR. WHEATLAND: Well, no, I'm going to  
17 object strenuously to having the record remain  
18 open. The --

19 MS. DeCARLO: For the limited purpose of  
20 accepting that methodology.

21 MR. WHEATLAND: I would object  
22 strenuously. The staff's had ample opportunity to  
23 make that request, and to do so at the last hour,  
24 and to keep the record open --

25 PRESIDING MEMBER KEESE: I think we've

1 got the numbers on the record.

2 MS. DeCARLO: How many offsets are  
3 guaranteed to be achieved by the East Altamont  
4 Energy Center/San Joaquin agreement?

5 MR. SWANEY: We expect to achieve at  
6 least the 66.8 tons per year based on our  
7 experience in implementing these programs for the  
8 past few years.

9 MS. DeCARLO: Are you guaranteeing that  
10 this tonnage will be achieved? Or is that just an  
11 estimate?

12 MR. SWANEY: That's what the agreement  
13 is based on, so that is what we fully expect to  
14 meet.

15 MS. DeCARLO: But the agreement, itself,  
16 doesn't require that that amount of mitigation be  
17 achieved, is that correct?

18 MR. SWANEY: That is correct.

19 MS. DeCARLO: If the project were  
20 located one mile to the east, which is physically  
21 within the District, would you be authorized to  
22 accept money for mitigation without specifying the  
23 tonnage reduction to be required?

24 MR. SWANEY: If the project had been  
25 located within our jurisdiction they would have

1 had to meet our rules and regulations, which would  
2 have been required to secure emission reduction  
3 credits to be used as offsets, similar to what has  
4 happened with the Bay Area FDOC. And that is  
5 where our jurisdiction would have ended.

6 MS. DeCARLO: And you would not have  
7 been allowed to receive just money for offsets, is  
8 that correct?

9 MR. SWANEY: Not to comply with our  
10 rules and regulations.

11 MS. DeCARLO: Is the District currently  
12 considering requesting redesignation to extreme?

13 MR. SWANEY: That is something we are  
14 considering.

15 MS. DeCARLO: And why is that?

16 MR. SWANEY: We currently are classified  
17 as severe nonattainment for ozone, and that  
18 carries a deadline of 2005 to show full compliance  
19 with that. We don't think that we can meet that.  
20 And that's why we are considering seeking the  
21 extreme nonattainment designation.

22 MS. DeCARLO: And when do you think you  
23 can achieve compliance?

24 MR. SWANEY: With the extreme  
25 designation we expect to achieve compliance within

1 the timeline of 2010.

2 MS. DeCARLO: How often does the Valley  
3 experience ozone exceedances?

4 MR. SWANEY: It depends on the year.  
5 This year was a little bit worse because of the  
6 meteorology. The specific number I do not have  
7 with me.

8 MS. DeCARLO: Do you have a ballpark  
9 figure?

10 MR. SWANEY: To be honest, no, I don't.

11 MS. DeCARLO: If I told you 35 to 40  
12 days per year for the federal standard, and 100  
13 days for the state, would that be kind of in your  
14 realm of possibility?

15 MR. SWANEY: I don't have any reason to  
16 dispute that.

17 MS. DeCARLO: Okay. And how often does  
18 the Valley experience PM10 exceedances?

19 MR. SWANEY: Again, I don't have those  
20 numbers with me.

21 MS. DeCARLO: If I told you five days  
22 for the federal standard and 90 to 100 days for  
23 the state standard, would you --

24 MR. SWANEY: Again, I don't have any  
25 reason to dispute that.

1 MS. DeCARLO: In your letter of October  
2 10, 2002, you reached the conclusion that the EAEC  
3 will not -- quote, "will not result in significant  
4 unmitigated air quality impacts on the San Joaquin  
5 air basin."

6 What environmental review led you to  
7 this conclusion?

8 MR. SWANEY: We looked at what the  
9 project emissions are, what their offsets are,  
10 what their offsets currently are proposed to  
11 determine what an impact would be unmitigated.  
12 And then based on that, with our number of \$15,000  
13 per ton, came with the amount in the agreement,  
14 with that we do feel that the project will not  
15 have any unmitigated impacts in the Valley.

16 MS. DeCARLO: Did you perform a  
17 cumulative impact assessment with that analysis?

18 MR. SWANEY: No.

19 MS. DeCARLO: Did you perform any  
20 modeling with that analysis?

21 MR. SWANEY: No.

22 MS. DeCARLO: Okay. That's all staff's  
23 questions.

24 HEARING OFFICER WILLIAMS: Okay.

25 MS. DeCARLO: Oh, I'm sorry, we have one

1 more. Now, the 66-ton figure you came up with,  
2 64, is that for just one year or --

3 MR. SWANEY: Well, that represents the  
4 tons per year that their offset package, as  
5 provided in the Bay Area, does not mitigate the  
6 impacts in the Valley. That's what that number  
7 is, the 66.8 tons per year.

8 MS. DeCARLO: Thank you. That's all.

9 HEARING OFFICER WILLIAMS: Mr. Sarvey.

10 CROSS-EXAMINATION

11 BY MR. SARVEY:

12 Q You testified that you have the same  
13 goals as the CEC and the Bay Area Air Quality  
14 Management District to protect health, is that  
15 correct?

16 MR. SWANEY: Yes.

17 MR. SARVEY: Did you perform a health  
18 risk assessment on this project?

19 MR. SWANEY: No, but we did review what  
20 was performed by the Bay Area.

21 MR. SARVEY: Did the Mountain House  
22 development receive a statement of overriding  
23 considerations for air quality impacts?

24 MR. SWANEY: That is what the County  
25 Board of Supervisors adopted.



1           MR. SARVEY: And did San Joaquin Valley  
2 Air Pollution Control District go along with that?

3           MR. SWANEY: We told them what  
4 mitigation measures they should implement. But  
5 beyond that they make the decision as to whether  
6 or not it's mitigated or overriding  
7 considerations.

8           MR. SARVEY: So they provided no  
9 offsets?

10          MR. SWANEY: They have mitigation  
11 measures built into the EIR.

12          MR. SARVEY: But no offsets?

13          MR. SWANEY: They're not a stationary  
14 source. Offsets wouldn't matter to them.

15          MR. SARVEY: Okay. The Tracy Hills  
16 project, did it also accept a statement of  
17 overriding considerations for air quality impacts?

18          MR. SWANEY: That's my understanding.

19          MR. SARVEY: And the South Schulte  
20 project, as well?

21          MR. SWANEY: Again, that's my  
22 understanding.

23          MR. SARVEY: Okay. Are you familiar  
24 with the Gateway project that will bring 40,000  
25 jobs to the area?

1 MR. SWANEY: Personally, no.

2 MR. SARVEY: Do you anticipate they will  
3 receive a statement of overriding considerations?

4 MR. SWANEY: I'm not familiar with the  
5 project, so I can't have an opinion on that one.

6 MR. SARVEY: Are you familiar with the  
7 River Islands project and its pollution estimates?

8 MR. SWANEY: I have never heard of that  
9 project.

10 MR. SARVEY: Okay. Was the Odessa Auto  
11 Auction facility required to offset their criteria  
12 pollutants?

13 MR. SWANEY: No, their emissions were  
14 below offset thresholds.

15 MR. SARVEY: Did you state in your  
16 comments on the PSA that the wind will blow the  
17 pollutants from the East Altamont Energy Center  
18 into the San Joaquin Valley 67 to 75 percent of  
19 the time?

20 MR. SWANEY: Based on the windrows data,  
21 yes.

22 MR. SARVEY: If the applicant's  
23 estimates are correct, and there is some  
24 uncertainty in their estimates, 75 percent of the  
25 pollutants would be approximately 50 tons of POC,

1 200 tons of NOx, 120 tons of PM2.5, and 16 tons of  
2 SO2, does that sound ballpark?

3 MR. SWANEY: I don't have an opinion on  
4 those numbers.

5 MR. SARVEY: I'd rather not go into the  
6 individual calculation of them, but that is 75  
7 percent of the offsets -- I mean if you want to  
8 verify it, we could sit down and do it. But, I  
9 think we've got a little time constraint.

10 Would you accept that as true?

11 MR. SWANEY: For purposes of --

12 MR. SARVEY: Subject to verification  
13 with your calculator there?

14 MR. SWANEY: Sure.

15 MR. SARVEY: Okay. Does the San Joaquin  
16 Valley Air Pollution Control District have higher  
17 offset ratios for ERCs than the Bay Area District?

18 MR. SWANEY: Overall, yes.

19 MR. SARVEY: You state in your comments  
20 on the PSA that the San Joaquin Valley Air  
21 Pollution Control District is currently under  
22 sanction from the EPA and required to provide two-  
23 to-one offsets for criteria pollutants.

24 Did you state that?

25 MR. SWANEY: At the time that was

1 correct.

2 MR. SARVEY: In your mitigation  
3 agreement you state that the East Altamont Energy  
4 Center was evaluated as if it was located in the  
5 San Joaquin Valley Air Pollution Control District  
6 in accordance with San Joaquin Valley Air  
7 Pollution Control District new source rules, and  
8 consistent with other evaluations of power plants  
9 located in the San Joaquin Valley, is that  
10 correct?

11 MR. SWANEY: That's correct.

12 MR. SARVEY: Did you also apply EPA and  
13 CARB rules in your analysis, or is your District  
14 exempt from these rules?

15 MR. SWANEY: I don't understand what you  
16 mean by EPA and CARB rules. Our rules have been  
17 reviewed and approved by both of those agencies.

18 MR. SARVEY: So you evaluated the  
19 project consistent with all the rules and  
20 regulations of the San Joaquin Valley Air  
21 Pollution Control District, Air Resources Board  
22 and EPA in a manner that is consistent with all  
23 projects you evaluate, is that correct?

24 MR. SWANEY: Well, as stated before, we  
25 were looking at what the net impact would be on

1 the Valley. As I stated before, we did not run an  
2 independent health risk assessment.

3 MR. SARVEY: Are you familiar with the  
4 ARB rules on fugitive dust ERCs substituted for  
5 power plant combustion emissions?

6 MR. SWANEY: I'm aware of that paper.

7 MR. SARVEY: And did you grant the Tesla  
8 project full mitigation for their road-paving  
9 ERCs?

10 MR. SWANEY: I'm not sure what that  
11 really has to do with this proceeding.

12 MR. SARVEY: It goes to cumulative  
13 impact and also the consistency of your mitigation  
14 agreements between Tesla and East Altamont.

15 HEARING OFFICER WILLIAMS: If you know.

16 MR. SWANEY: We gave them 100 percent of  
17 credit for those.

18 MR. SARVEY: So, I'll ask you again, are  
19 you familiar with the Air Resources Board stance  
20 on using road paving as an offset for fine  
21 particulate matter from combustion?

22 MR. SWANEY: And, again, I'll say that I  
23 am familiar. And again I will state that ARB has  
24 never commented on any project dealing with that  
25 issue.

1           MR. SARVEY: Are you aware that that  
2 exact same emission reduction credits has been  
3 rejected in the East Altamont Energy Center case?

4           MR. SWANEY: My understanding is that  
5 the applicant chose to secure another source of  
6 PM10 credits. Not that it was rejected.

7           MR. SARVEY: So you feel that road  
8 paving particulate matter is equivalent and is an  
9 offset that you would consider acceptable for  
10 combustion PM2.5?

11          MR. WHEATLAND: On this project?

12          MR. SARVEY: On this project or any  
13 project.

14          MR. SWANEY: Well, they're not proposing  
15 it for this project.

16          MR. SARVEY: Well, how about on the  
17 Tesla project?

18          MR. WHEATLAND: I object to the Tesla  
19 project.

20          HEARING OFFICER WILLIAMS: Sustained.

21          MR. SARVEY: I thought I just said I was  
22 trying to go to cumulative impacts here with this,  
23 as well as consistency.

24          HEARING OFFICER WILLIAMS: Yeah, but  
25 again, --

1           PRESIDING MEMBER KEESE: We're talking  
2 about this project and his testimony.

3           HEARING OFFICER WILLIAMS: Yeah, I mean  
4 what they do in Tesla is not really relevant --

5           MR. SARVEY: He did the Tesla mitigation  
6 agreement.

7           PRESIDING MEMBER KEESE: Well, you can't  
8 talk to biology or anything, we're talking about  
9 air, his testimony --

10          MR. SARVEY: I was addressing air, I was  
11 addressing fugitive dust as a substitution for  
12 combustion PM2.5 --

13          PRESIDING MEMBER KEESE: Well, --

14          HEARING OFFICER WILLIAMS: It's  
15 comparing apples and oranges. I mean here we're  
16 not dealing with --

17          MR. SARVEY: Exactly, that's what I'm  
18 saying. You can't accept that road paving credit  
19 in a mitigation agreement.

20          MR. SWANEY: But we're not --

21          MR. SARVEY: The Air Resources Board  
22 rejects it.

23          PRESIDING MEMBER KEESE: This Committee  
24 didn't get a chance to look at that. Between the  
25 applicant and the staff they withdrew that, I've

1 heard.

2 MR. SARVEY: I've got the -- it's one of  
3 my exhibits.

4 PRESIDING MEMBER KEESE: They withdrew  
5 it from this case.

6 MR. SARVEY: Pass these out for me,  
7 Mike.

8 HEARING OFFICER WILLIAMS: Yeah, what  
9 we're saying is that the road paving is not really  
10 relevant to what is happening in this East  
11 Altamont.

12 If there's a problem in Tesla, then  
13 that's where it's relevant to.

14 MR. SARVEY: Well, it's very relevant,  
15 because if we're accepting a mitigation agreement  
16 from the San Joaquin Valley Air Pollution Control  
17 District, and it doesn't completely mitigate all  
18 the impacts, there's a cumulative impact from that  
19 facility, as well as East Altamont Energy Center,  
20 so it's very relevant.

21 HEARING OFFICER WILLIAMS: Well, you  
22 know, I don't think you've established that the  
23 road paving is inadequate in Tesla is the problem.

24 MR. SARVEY: Well, Mike's handing out  
25 the Air Resources Board comments on it.



1 HEARING OFFICER WILLIAMS: I don't think  
2 we got a copy up here.

3 MR. SARVEY: Mike, could you give them a  
4 copy?

5 MR. BOYD: You didn't give me enough.

6 (Pause.)

7 MR. SARVEY: Are you familiar with EPA  
8 guidelines on pre-1990 ERCs?

9 MR. SWANEY: Yes.

10 MR. SARVEY: And did you accept the  
11 applicant's emission reduction credits for SO2  
12 that were issued before 1990 as a mitigation in  
13 your consideration?

14 MR. SWANEY: If the Bay Area accepted  
15 them, which they did, then we would have the same  
16 basis for accepting them.

17 MR. SARVEY: As that was demonstrated in  
18 your attainment plan, as well?

19 MR. SWANEY: We have our own issues with  
20 that that we've dealt with on EPA. And, again, if  
21 the credits have been accepted by the Bay Area,  
22 and they have been, then we would also accept  
23 them.

24 MR. SARVEY: In the San Joaquin Valley  
25 Air Pollution Control District if you have a pre-

1 1990 ERC that has not been demonstrated in the  
2 attainment plan, do you accept that?

3 MR. SWANEY: Within our own emission  
4 reduction credit rule we address that issue. And  
5 we do accept those, you know, as long as they meet  
6 what is required, we accept them.

7 And EPA has never discounted any of  
8 those credits in our projects.

9 MR. SARVEY: What is the interpollutant  
10 ratio that the Bay Area Air Quality Management  
11 District required of the East Altamont Energy  
12 Center in relation to its SO2 to PM10  
13 interpollutant offset ratio for this project?

14 MR. SWANEY: I'm really not familiar; I  
15 know within our mitigation agreement they used a  
16 three-to-one ratio.

17 MR. SARVEY: And what interpollutant  
18 offset ratio did you apply in your analysis?

19 MR. SWANEY: That's what I just said, in  
20 our agreement it was three-to-one.

21 MR. SARVEY: Could you take a look at  
22 exhibit A2? Do you have that in your possession?

23 HEARING OFFICER WILLIAMS: Is that your  
24 exhibit, Mr. Sarvey?

25 MR. SARVEY: Yes. It's also his

1 exhibit, as well.

2 HEARING OFFICER WILLIAMS: Which A2 are  
3 you referring to?

4 MR. SWANEY: I believe he means of the  
5 mitigation agreement between ourselves and the  
6 applicant.

7 HEARING OFFICER WILLIAMS: Okay.

8 MR. SWANEY: Is that correct, Bob?

9 MR. SARVEY: That's correct. I'm having  
10 a little trouble reading the size of this writing  
11 here, but I don't read that as three-to-one on  
12 your combined San Joaquin Valley Air Pollution  
13 Control District inter-precursor ratio, is that  
14 correct?

15 MR. SWANEY: The inter-precursor ratio  
16 over on the right side is specified as 3.0-to-1.

17 MR. SARVEY: That's for the Bay Area.  
18 I'm speaking of your combined --

19 MR. SWANEY: That's what we use.

20 MR. SARVEY: -- distance --

21 MR. SWANEY: What I'm saying is that is  
22 the number that we use.

23 MR. SARVEY: No, you're listing another  
24 number in here.

25 MR. SWANEY: That's --

1 MR. SARVEY: In your analysis here.

2 MR. SWANEY: Are you talking about the  
3 3.5?

4 MR. SARVEY: Um-hum.

5 MR. SWANEY: That is a combined inter-  
6 pollutant ratio, plus a distance ratio.

7 MR. SARVEY: Okay, thank you.

8 MR. WHEATLAND: While we have this  
9 document out, I don't believe it's been marked for  
10 identification. Could we mark this East Altamont  
11 Energy Center air quality mitigation settlement  
12 agreement, as the applicant's next in order?

13 HEARING OFFICER WILLIAMS: Yes, we'll  
14 mark it as --

15 MR. WHEATLAND: Oh, I'm sorry, I'm  
16 sorry, --

17 MR. SPEAKER: It's right here.

18 MR. WHEATLAND: -- you said you'd  
19 substitute it for the unsigned version. I  
20 apologize.

21 HEARING OFFICER WILLIAMS: Yes.

22 MR. WHEATLAND: Yeah, sorry.

23 (Pause.)

24 MR. SARVEY: Calling your attention to  
25 the Tesla mitigation agreement with your District,

1 it seems that you've estimated the percentage of  
2 time the wind blows into the San Joaquin Valley  
3 Air Pollution Control District to estimate the  
4 amount of emissions blowing into San Joaquin  
5 Valley. But I fail to see the same analysis in  
6 your East Altamont agreement, is that correct?

7 MR. SWANEY: As stated before, we used  
8 different methodologies in these two agreements.

9 MR. SARVEY: Okay. Further, you  
10 calculate the emissions in the San Joaquin Valley  
11 during nonattainment quarters. Did you do this in  
12 the East Altamont Energy Center?

13 MR. SWANEY: As previously stated, we  
14 used two different methodologies in these  
15 agreements, so they won't be the same.

16 MR. SARVEY: Okay. You then calculated  
17 emissions in the San Joaquin Valley during  
18 nonattainment quarters, but you then give them  
19 full credit for their ERCs for the entire year,  
20 rather than the nonattainment quarters. Does this  
21 seem inconsistent?

22 MR. SWANEY: Again, we used different  
23 methodologies in the Tesla case than we're dealing  
24 with the East Altamont case.

25 MR. SARVEY: I'm dealing specifically

1 with table 3 in your Tesla agreement.

2 MR. SWANEY: And, again, we're dealing  
3 with the East Altamont case in these proceedings.

4 MR. SARVEY: Correct. And I --

5 MR. SWANEY: That's why I fail to see  
6 the relevance.

7 MR. SARVEY: The relevance is that I'm  
8 trying to --

9 HEARING OFFICER WILLIAMS: Which  
10 document are you now holding, Mr. Sarvey?

11 MR. SARVEY: I'm on exhibit A2.

12 HEARING OFFICER WILLIAMS: I don't think  
13 we have a copy of that one.

14 (Pause.)

15 MR. SARVEY: What I'm alluding to is you  
16 said you've done both these documents consistent  
17 with all San Joaquin Valley Air Pollution Control  
18 District rules and regulations. And what I'm  
19 saying is that you're calculating the emissions in  
20 the San Joaquin Valley during nonattainment  
21 quarters, and then you're giving them full benefit  
22 from the Bay Area ERCs without discounting them by  
23 nonattainment quarters. Is that correct?

24 MR. SWANEY: I'm reviewing the Tesla  
25 agreement to see exactly what it says.

1 (Pause.)

2 MR. SWANEY: There is nothing in the  
3 agreement that states that the agreement amounts  
4 were based upon compliance with our rules and  
5 regulations.

6 When I had stated that we had reviewed  
7 the project, that was our own internal review.  
8 That was to insure that we felt that they provided  
9 best available control technology, which by  
10 revising their NOx emissions to 2 ppm on a one-  
11 hour standard, they do.

12 Looking to make sure that we agreed with  
13 their offset package for compliance with the Bay  
14 Area rules and regulations, which they do.

15 MR. SARVEY: Does that change your  
16 answer to the question I asked earlier in your  
17 mitigation agreement you state that the East  
18 Altamont Energy Center was evaluated as if it was  
19 located in the San Joaquin Valley Air Pollution  
20 Control District in accordance with San Joaquin  
21 Valley Air Pollution Control District new source  
22 rules, and consistent with evaluations of the  
23 power plants located in the San Joaquin Valley, is  
24 that correct?

25 MR. SWANEY: That was the basis for the

1 methodology in the agreement, yes.

2 MR. SARVEY: In your agreement here in  
3 table 3, if you discount the San Joaquin Valley  
4 benefit from Bay Area ERCs seasonally, as you have  
5 the emissions, wouldn't your amount of NOx and  
6 VOCs be much higher that you would be required  
7 to -- or they would be required to mitigate?

8 MR. SWANEY: Again, that deals with the  
9 Tesla project, and we're not dealing with the  
10 Tesla project right now.

11 MR. SARVEY: I think we're dealing with  
12 the consistency of the rules and regulations of  
13 San Joaquin Valley Air Pollution Control District  
14 in relation to these mitigation agreements, so I  
15 think it is relevant.

16 MR. SWANEY: Well, one thing to keep in  
17 mind, Mr. Sarvey, is that these projects are not  
18 subject to our rules and regulations.

19 What we're doing is simply determining  
20 what we feel the unmitigated impacts will be based  
21 on compliance with the Bay Area regulations, and  
22 determining how those should be mitigated.

23 MR. SARVEY: So you're not applying San  
24 Joaquin Valley Air Pollution Control District  
25 rules and regulations to these mitigation



1 agreements?

2 MR. SWANEY: Again, that is how we came  
3 up with the methodology for the East Altamont  
4 Center; we used a different methodology with  
5 Tesla.

6 MR. SARVEY: If you're not --

7 MR. SWANEY: They achieve the same  
8 result.

9 COMMISSIONER PERNELL: Okay, Mr.  
10 Williams, this dialogue back and forth, I would  
11 request a question and an answer. A question and  
12 an answer. Mr. Sarvey.

13 MR. SARVEY: You want me to ask the same  
14 question again?

15 HEARING OFFICER WILLIAMS: No, I think  
16 what --

17 PRESIDING MEMBER KEESE: His answer, I  
18 believe, was that they have no authority in this  
19 case. But they made a voluntary deal with the  
20 applicant. They have no authority to impose any  
21 rules.

22 MR. SARVEY: Right. Well, the question  
23 I asked wasn't that. It was did he --

24 HEARING OFFICER WILLIAMS: Did he impose  
25 the rules --

1 MR. SARVEY: -- analyze the project with  
2 the rules and regulations of the San Joaquin --

3 PRESIDING MEMBER KEESE: He can't impose  
4 them on them.

5 MR. SARVEY: Did he evaluate it with  
6 them. I didn't say impose --

7 HEARING OFFICER WILLIAMS: Well, --

8 PRESIDING MEMBER KEESE: I think we  
9 heard that, it was yes.

10 HEARING OFFICER WILLIAMS: I think he  
11 did say, in both cases, that there was  
12 consideration of San Joaquin's rules. But that  
13 different methodologies were used. So they  
14 considered the rules, but they used different  
15 roads to get to where they wanted to go.

16 (Pause.)

17 MR. SARVEY: In your analysis of the  
18 project, according to the rules and regulations of  
19 the District did you do an analysis of secondary  
20 formation of PM2.5 for ammonia slip?

21 MR. SWANEY: No.

22 MR. SARVEY: Did you require any offsets  
23 or did you consider any additional mitigation for  
24 the PM2.5 for ammonia slip?

25 MR. SWANEY: No.

1 MR. SARVEY: And what is your  
2 understanding of the CARB and EPA guidelines for  
3 ammonia slip?

4 MR. SWANEY: I know what CARB and EPA  
5 have said, but they have never commented on any of  
6 our projects where a 10 ppm ammonia slip has been  
7 proposed.

8 MR. SARVEY: Is the CEC the lead agency  
9 in this siting case, and are they required to  
10 evaluate the impacts of this facility under CEQA?

11 MR. SWANEY: That's my understanding.

12 MR. SARVEY: Thank you, Mr. Swaney.

13 HEARING OFFICER WILLIAMS: Mr. Boyd.

14 CROSS-EXAMINATION

15 BY MR. BOYD:

16 Q My first question is, is your agency a  
17 responsible agency for this, a responsible agency  
18 for this project?

19 MR. SWANEY: My agency has been accepted  
20 as an intervenor in this project.

21 MR. BOYD: Okay. Is your agency an  
22 affected agency by this project? Does it affect  
23 your agency?

24 MR. SWANEY: My understanding of the  
25 question, I would say yes, that's why we filed as

1 an intervenor.

2 MR. BOYD: I asked Dennis Jang from the  
3 Air District this, and I ask you the same, is your  
4 District a CEQA agency subject to the requirements  
5 of CEQA?

6 MR. SWANEY: We are not.

7 MR. BOYD: You're not? They are, but  
8 you're not? You don't have a CEQA process at all?

9 MR. SWANEY: We do not have a CEQA  
10 process codified, no.

11 MR. BOYD: Okay, so to your knowledge  
12 you're not subject to CEQA?

13 MR. SWANEY: Well, all --

14 COMMISSIONER PERNELL: Mr Boyd, he said  
15 he's not.

16 MR. BOYD: Okay.

17 MR. SWANEY: Well, all permitting  
18 agencies are subject to CEQA.

19 MR. BOYD: Right.

20 MR. SWANEY: We don't have anything  
21 codified in our rules and regulations about it.

22 MR. BOYD: So if you had a, say a power  
23 plant project came before you, would you have to  
24 do some kind of environmental review pursuant to  
25 CEQA?

1           MR. SWANEY:  If we had any type of  
2     project that comes before us that would be subject  
3     to CEQA review, and there is no other agency  
4     acting as a lead agency, in those rare cases then  
5     we would assume lead agency duties.

6           MR. BOYD:  Okay.  In evaluating this  
7     project, is it your opinion that either your  
8     agency performed an independent review,  
9     environmental review of this project, based on  
10    your own analysis, compliant with the requirements  
11    of CEQA.

12          MR. WHEATLAND:  Before you answer,  
13    independent of whom?

14          MR. BOYD:  Independent from you,  
15    independent from the CEC, independent from the Bay  
16    Area Air Quality Management District.  You want  
17    some more?

18                 Independent from the County of San  
19    Joaquin, independent -- I mean I could go on and  
20    on.  An independent review, their own review.

21          MR. SWANEY:  We did do our own review;  
22    whether it rises to the level of an agency under  
23    CEQA, I just don't know enough about the process  
24    to address.

25          MR. BOYD:  Okay.  Now, another question.

1 Did you hear when Dennis was being queried about  
2 the health risk assessment that the Bay Area Air  
3 Quality Management District performed, did you  
4 hear him mention that they didn't do a health risk  
5 assessment on your District, the jurisdictional  
6 area of your District?

7 MR. SWANEY: My understanding of what  
8 Mr. Jang said is when they did the health risk  
9 assessment they didn't look to see where the  
10 maximum impacts were occurring. They simply  
11 evaluated it wherever the impact was, which is  
12 exactly what I would have expected them to do.

13 I think that they did what they needed  
14 to do.

15 MR. BOYD: And you also said earlier  
16 that your agency did not perform your own  
17 independent health risk assessment for this  
18 project?

19 MR. SWANEY: That's correct.

20 MR. BOYD: Do you know anyone who did  
21 perform a health risk assessment for the impacts  
22 of this project on the agency under -- the  
23 jurisdictional boundaries of your agency?

24 MR. SWANEY: Well, again, the Bay Area  
25 District did perform a health risk assessment.

1 And in doing so you look at where is the point of  
2 maximum concentrations regardless of which county  
3 they happen to fit in.

4 MR. BOYD: Well, he mentioned that it  
5 wasn't in your County then.

6 MR. SWANEY: Well, if it wasn't in my  
7 County, then it wasn't in my County. And --

8 MR. BOYD: That doesn't mean there was  
9 no health risk assessment, does it? That doesn't  
10 mean there was no health risk --

11 PRESIDING MEMBER KEESE: Mr Boyd.

12 MR. BOYD: -- to your jurisdiction?

13 PRESIDING MEMBER KEESE: Mr Boyd, Mr.  
14 Boyd, --

15 MR. BOYD: I'm asking a question.

16 PRESIDING MEMBER KEESE: This is not  
17 jurisdictional stuff.

18 MR. BOYD: I'm trying to clarify that  
19 there was no --

20 PRESIDING MEMBER KEESE: What they did  
21 was --

22 MR. BOYD: -- health risk assessment in  
23 the record anywhere performed for the San Joaquin  
24 Air Pollution Control District --

25 PRESIDING MEMBER KEESE: But I think

1 that we've heard --

2 MR. BOYD: -- jurisdictional boundaries.

3 And --

4 PRESIDING MEMBER KEESE: -- there was  
5 nothing in the record from San Joaquin because it  
6 was nonjurisdictional.

7 MR. BOYD: Okay, the other issue I'm  
8 trying to bring out is that they do have a  
9 requirement under CEQA to do an independent  
10 analysis. And, he seems to believe that's not the  
11 case. So, I basically -- I'm done.

12 PRESIDING MEMBER KEESE: Okay.

13 MR. BOYD: So, that's it.

14 PRESIDING MEMBER KEESE: Okay.

15 HEARING OFFICER WILLIAMS: Thank you.

16 Mr. Boyd -- excuse me, Mr. Sarvey. Applicant, you  
17 have some questions?

18 MR. WHEATLAND: One question.

19 HEARING OFFICER WILLIAMS: Okay.

20 MR. WHEATLAND: Haven't had a chance  
21 yet; just one.

22 MR. SARVEY: Sorry, Mr. Wheatland.

23 CROSS-EXAMINATION

24 BY MR. WHEATLAND:

25 Q Did the San Joaquin Valley APCD, in its



1 review of this project, take into account both  
2 state and federal air quality standards?

3 MR. SWANEY: Yes, we did.

4 MR. WHEATLAND: Thank you. That's all  
5 the questions.

6 HEARING OFFICER WILLIAMS: So, Mr.  
7 Sarvey, are you prepared to go forward with your  
8 presentation?

9 MS. SARVEY: Are we having public  
10 comment on air?

11 HEARING OFFICER WILLIAMS: Yeah, after,  
12 at the end.

13 Do you have -- are you going to submit  
14 your exhibits?

15 MR. SARVEY: Oh, --

16 HEARING OFFICER WILLIAMS: We've marked  
17 quite a few of them.

18 (Pause.)

19 HEARING OFFICER WILLIAMS: Yeah, we can  
20 take public comment while you're looking at the  
21 exhibits.

22 MS. SARVEY: I'd like to read two --

23 HEARING OFFICER WILLIAMS: Please state  
24 your name for the record.

25 MS. SARVEY: Oh, I'm Susan Sarvey with

1 CACKLE, Citizens for Clean Air and Legal Equality.

2 So, in order for everybody to understand  
3 my comments, I'd like to read a paragraph from  
4 Commissioner Keese to my Assemblywoman, and her  
5 response.

6 On March 20th Chairman Keese, excuse me,  
7 sorry, wrote: "One of the concerns raised by  
8 residents in the Tracy area pertains to the  
9 potential impacts of multiple projects in the  
10 area on air quality and the proximity of  
11 these projects to residential areas.

12 "As part of the review process for these  
13 projects as required by the California  
14 Environmental Quality Act, CEQA, the Energy  
15 Commission performs a cumulative air quality  
16 impacts analysis. Thus the impact on local  
17 air quality from the combined emissions of  
18 all nearby facilities is examined. All of  
19 them.

20 "To approve these power plants the Energy  
21 Commission must find that individually and  
22 cumulatively the projects do not cause or  
23 contribute to a significant unmitigated  
24 environmental impact, which includes public  
25 health and safety issues, in addition to air

1 quality and public health.

2 "The Energy Commission also looks at a wide  
3 range of other issues including traffic and  
4 transportation, socioeconomics and land use.

5 This is from my Assemblywoman for Tracy,  
6 to Chairman Keese, on October 11th of this year:

7 "Dear Mr. Keese: In your letter of March 20,  
8 2002 you addressed the concern I raised about  
9 the potential impact of multiple projects in  
10 the Tracy area on air quality. You noted  
11 that as part of the review of these projects  
12 CEQA requires the Energy Commission to  
13 perform a cumulative air quality impact  
14 analysis, examining the impact on local air  
15 quality from the combined emissions of all  
16 the facilities within a specified  
17 geographical area.

18 "A constituent has informed me that the  
19 California Energy Commission Staff requested  
20 that the applicant in the East Altamont  
21 Energy Center project perform a qualitative  
22 cumulative air analysis to assess the impacts  
23 from the three plants and the additional  
24 projects in the area.

25 "It is my understanding that the EAE

1 applicants were not in favor of providing  
2 this analysis and that the staff appealed the  
3 matter to the full Commission, and that  
4 Commission decided not to require the  
5 analysis.

6 "The final staff assessment, environmental  
7 assessment of the East Altamont Energy Center  
8 notes that the EAEC, as proposed, has the  
9 potential to create significant impacts on  
10 local and regional air quality, one through  
11 six.

12 "It appears that while mitigations are  
13 proposed this facility intensifies the  
14 concerns regarding air quality in Tracy.

15 Cumulative impacts are only briefly  
16 addressed. Please let me know as soon as  
17 possible whether a cumulative air qualities  
18 impacts analysis related to all the projects  
19 has been performed. If not, please explain  
20 why or when it will be completed. Thank you  
21 in advance for your assistance in this  
22 matter."

23 So.

24 PRESIDING MEMBER KEESE: Would you like  
25 me to comment on that?

1 MS. SARVEY: So those are the  
2 guidelines.

3 PRESIDING MEMBER KEESE: Would you like  
4 me to comment on that?

5 MS. SARVEY: Yes.

6 COMMISSIONER PERNELL: Who is the  
7 representative?

8 PRESIDING MEMBER KEESE: The constituent  
9 who informed her, misinformed her broadly about  
10 the matter.

11 MS. SARVEY: Okay. So we've  
12 established --

13 PRESIDING MEMBER KEESE: I'm aware. She  
14 got a response.

15 MS. SARVEY: -- that no one really  
16 looked at the medical impacts for Tracy. That's  
17 what really came out here. They didn't feel they  
18 had to look at them, he listened to them, and he  
19 didn't have to look at them.

20 PRESIDING MEMBER KEESE: This --

21 MS. SARVEY: So now I want to make my  
22 public comment.

23 PRESIDING MEMBER KEESE: Mrs. Sarvey,  
24 there was a cumulative impact done with regard to  
25 the Tesla. Staff --

1 MS. SARVEY: No, you --

2 PRESIDING MEMBER KEESE: -- staff also  
3 testified today that they did a cumulative impact.

4 MS. SARVEY: But it did not include GWF,  
5 Tesla, EAEC --

6 PRESIDING MEMBER KEESE: -- I'm sorry,  
7 you must have been out of the room --

8 MS. SARVEY: -- Gateway, Tracy Hills,  
9 Mountain House, Delta Community College. No,  
10 listen. Did they include Delta --

11 PRESIDING MEMBER KEESE: Okay --

12 MS. SARVEY: -- Community College, South  
13 Schulte, the Biomass Plant, Owens Brockway? I  
14 heard everybody saying they did cumulative  
15 studies, but none of them did everybody. And they  
16 all talked about GWF; I was on the GWF mitigation  
17 committee. I'm on the implementation committee.

18 And I'm here to tell you since we did  
19 that plan, more things have been approved in Tracy  
20 that pollute. And a lot, a whole lot. So you  
21 need to do a current cumulative analysis. So now  
22 can I please make my public comment?

23 What kind of health risks come from  
24 ammonia particulate? And how do you propose to  
25 offset these risks? What kind of measures are you

1 implementing to deal with your ammonia choice and  
2 its terrorist potential and the risk of explosion  
3 in an accident or during an earthquake?

4 What kind of a response, and how quick  
5 does it need to be started, if we have a problem  
6 with this ammonia? Why can't we have the less  
7 dangerous aqueous ammonia?

8 The continuous bringing up of the GWF  
9 TPP disturbs me, because TPP did mitigate with  
10 Tracy. They publicized all their meetings in our  
11 local paper. They did get local credits, and they  
12 are trying to help us with our air concerns. And  
13 it's not through these guys. It's with us, the  
14 community.

15 But Calpine is not working with Tracy at  
16 all. They're using old emission credits, that's  
17 why we don't have clean air. You're talking about  
18 stuff from over 20 years ago.

19 They are ignoring our community and  
20 completely denying the citizens information in an  
21 easily accessible way about this process, i.e.,  
22 using The Tracy Press.

23 The continuous bringing up of the San  
24 Joaquin Valley Pollution Control District deal is  
25 upsetting because 300,000 of it was on the -- \$3

1 million was on the table, and for some reason they  
2 turned it down for \$900,000 plus. Since when does  
3 an honest Air District turn down money for clean  
4 air? How can you have clean air planned when  
5 you're using all these old credits?

6 I must insist that Calpine be held to  
7 the low numbers they are insisting on giving us.  
8 When they reach them, they must be forced to shut  
9 down until the following year. Accurate,  
10 qualitative, cumulative air studies have not been  
11 done, as promised to my Assemblyperson.

12 Many new projects have started since the  
13 GWF hearings, Gateway and Mountain House being  
14 just two. I don't understand how 500 tons per  
15 year of particulate matter can be a disputed  
16 health risk or problem. Calpine refused to  
17 publicize these hearings. GWF was more than  
18 willing.

19 What is Calpine afraid of? Calpine  
20 refuses to deal with the community of Tracy. GWF  
21 knows us very well, and they even like us. I  
22 can't believe Calpine now says there will be no  
23 plume. If there is no plume, how is all this  
24 pollution getting into Tracy? Or are you now  
25 saying there will be no plume, and no pollution?



1           We're the experts supposed to address  
2           how they were going to make life safe for us?  
3           Calpine is coming into a severe nonattainment  
4           area. Mr. Rubenstein says he believes there is no  
5           negative impacts, none to our air quality. I  
6           don't understand how that can be when all the  
7           charts say they are dumping so many tons of  
8           various matter in my community's air.

9           Since San Joaquin Valley Air Pollution  
10          Control District and Calpine have no issues or  
11          fears for my air quality, I think the air  
12          monitoring station, GWF has mitigated to be  
13          installed here to measure Tracy's PM10s and other  
14          levels, et cetera, should be installed  
15          immediately, and data collected now in order to  
16          alleviate my community's concern, and to prove  
17          Calpine's point.

18          I'm not an expert, but a resident, and I  
19          don't know what it is that is granular that I am  
20          breathing or why my kids are having a harder and  
21          harder time breathing, and that more and more of  
22          their friends are being diagnosed with asthma  
23          daily.

24          Mr. Rubenstein did not analyze ozone  
25          levels in Tracy, but ozone was a serious issue in

1 August and September this year in Tracy.

2 I heard a lot of things like, SO2 were  
3 not included in this analysis. Who decided what  
4 was in this analysis? This analysis definitely  
5 sounds incomplete. What measures are proposed for  
6 any and all impacts that turn out to be real and  
7 ongoing for my community that Calpine's experts  
8 did not foresee, or the Pollution Control  
9 District?

10 How does the CEC propose to handle these  
11 issues, i.e., the cancellation of the mutual aid  
12 agreement between Tracy and Alameda County.  
13 Midway residents have no emergency response now  
14 that is close by. This is a direct result of the  
15 licensing of GWF TPP and the assumed approval of  
16 Calpine and Tesla. With no monetary aid for Tracy  
17 emergency services.

18 The air quality section of this hearing  
19 sounds woefully inadequate. I heard too much, we  
20 did not look into that, we don't know, it's the  
21 other guy's job.

22 Mr. Commissioner, please explain to me  
23 how we are going to handle the problems that arise  
24 from these assumptions being wrong, and Calpine's  
25 being licensed already? How will the problems be

1 solved, and who is going to foot the bill?

2 Thank you.

3 COMMISSIONER PERNELL: Thank you.

4 PRESIDING MEMBER KEESE: Thank you.

5 HEARING OFFICER WILLIAMS: Okay, we've  
6 got -- Mr. Sarvey, we've got quite a number of  
7 exhibits from you. I think that we need to cover  
8 that briefly, as well as admit the parties'  
9 exhibits in the air quality.

10 So, we'll begin with the applicant. You  
11 want to move the exhibits in at this time?

12 MR. WHEATLAND: Yes, I do. Do you need  
13 me to give you the numbers --

14 HEARING OFFICER WILLIAMS: Well, --

15 MR. WHEATLAND: They're on air quality,  
16 I think 4G, G-1 and G-2, is that correct?

17 HEARING OFFICER WILLIAMS: Right, 4G-1,  
18 let's see, actually it's 4G, 4G-1, 4G-2 and 3.

19 MR. WHEATLAND: Yes, I'd move those into  
20 evidence.

21 HEARING OFFICER WILLIAMS: Any  
22 objection?

23 MS. DeCARLO: No objection.

24 HEARING OFFICER WILLIAMS: Okay those  
25 will be received. Applicant -- excuse me, staff.

1 MS. DeCARLO: Yes, if we could move our  
2 air quality testimony containing the FSA and the  
3 errata into evidence, as well as the Bay Area --  
4 the FDOC. I'm not sure if that's going to be, if  
5 that was moved in with the applicant's exhibits.

6 HEARING OFFICER WILLIAMS: Yeah, we'll  
7 move in the FDOC that we've already marked, that  
8 will be moved into evidence as well. And --

9 MS. DeCARLO: And can I reiterate my  
10 request to leave the record open to allow for  
11 those San Joaquin County calculations with regard  
12 to the application of the Tesla methodology to the  
13 East Altamont Energy Center?

14 HEARING OFFICER WILLIAMS: No, I think  
15 we've already indicated that those numbers are in  
16 the record, so we're going to leave --

17 MS. DeCARLO: The conclusions are  
18 contained in the record, but the numbers leading  
19 up, the analysis, the gist of the analysis is not  
20 in the record. And we believe if the conclusions  
21 are allowed in the record, than staff should have  
22 the opportunity to review the actual numbers that  
23 led up to the conclusion, and comment on those in  
24 the brief.

25 MR. WHEATLAND: Well, we've previously

1 established the CEC Staff's cumulative impact  
2 analysis is -- or findings are in the record, even  
3 though their analysis is not. My position is that  
4 the request, with respect to the San Joaquin  
5 District, for that information is untimely and  
6 could have been made much earlier.

7 MS. DeCARLO: This is the first  
8 indication we've had that the San Joaquin actually  
9 performed an analysis with the Tesla methodology.  
10 We're just requesting the opportunity to look at  
11 the numbers.

12 MR. WHEATLAND: This is the first time  
13 you've asked.

14 HEARING OFFICER WILLIAMS: Well, I think  
15 that once you provide that information to the  
16 staff, staff will docket the information and  
17 you're certainly free to brief on it.

18 MS. DeCARLO: Thank you.

19 HEARING OFFICER WILLIAMS: But, what the  
20 numbers or methodology might mean. Is that a good  
21 compromise? But we won't leave the record open in  
22 terms of any testimony on that methodology.

23 PRESIDING MEMBER KEESE: He's going to  
24 submit how he calculated the numbers.

25 MR. WHEATLAND: Right, right. Well,

1 would the staff provide us with a copy of their  
2 analysis, as well? And we can brief it as well?

3 MS. DeCARLO: What analysis are you  
4 referring to?

5 MR. WHEATLAND: Your cumulative impacts  
6 analysis.

7 MR. NGO: Oh, yeah, yeah. The moment I  
8 get back I will print the input and the output  
9 file and docket it immediately.

10 HEARING OFFICER WILLIAMS: Okay, is that  
11 agreeable to both parties?

12 MR. WHEATLAND: What we would like is  
13 the entire analysis.

14 MR. Ngo: That is the entire analysis.

15 HEARING OFFICER WILLIAMS: How big is  
16 your --

17 PRESIDING MEMBER KEESE: Is yours one  
18 page?

19 MR. SWANEY: Well, I just have some  
20 handwritten things --

21 PRESIDING MEMBER KEESE: You have one  
22 page, probably, with numbers?

23 MR. SWANEY: It definitely will be one  
24 page. One thing I want to say is that this is  
25 something that the staff could have been doing at

1 any time. The agreement with Tesla has already  
2 been docketed in that case. There is nothing  
3 special about the analysis, it's just sitting down  
4 and doing it, but I will prepare a short summary.

5 PRESIDING MEMBER KEESE: It's just the  
6 numbers. I don't think this is any surprise to  
7 anybody. It shouldn't be.

8 MR. WHEATLAND: All right, then we'll  
9 receive also the staff's analysis and be free to  
10 brief it, as well?

11 HEARING OFFICER WILLIAMS: Yes.

12 MR. WHEATLAND: Thank you.

13 HEARING OFFICER WILLIAMS: Okay, good.

14 MR. BOYD: All parties will be free to  
15 brief it?

16 HEARING OFFICER WILLIAMS: Yes, all  
17 parties.

18 MR. BOYD: Thank you.

19 HEARING OFFICER WILLIAMS: So staff's  
20 and applicant's exhibits that we've discussed  
21 today relevant to air quality are admitted into  
22 evidence.

23 Mr. Sarvey, we stopped taking, numbering  
24 yours. I left some bookmarks, but your PM10 index  
25 from the ARP almanac was L. We've got a number of

1       ones since then. Do you have any idea what order  
2       you want to put these in?

3               MR. SARVEY: I don't think it matters,  
4       Mr. Williams, whatever order is acceptable to you  
5       is acceptable to me.

6               HEARING OFFICER WILLIAMS: Yeah, how  
7       about that I'll add these to the exhibit list, and  
8       you'll have a chance to comment on it before  
9       tomorrow, before we move these in, okay?

10              MR. SARVEY: Okay.

11              MR. WHEATLAND: Very good.

12              HEARING OFFICER WILLIAMS: Now, Mr.  
13       Boyd.

14              MR. BOYD: I don't really know how to  
15       deal with this, but I've prepared -- all my  
16       exhibits are part of my prehearing conference  
17       statement.

18              HEARING OFFICER WILLIAMS: Right.

19              MR. BOYD: Including all my air stuff.  
20       Dr. Smallwood's testimony and all that. And I was  
21       wondering if it was possible just for me to  
22       provide this as the exhibit that I'm putting into  
23       evidence, or do you have to separate them out,  
24       each individual, the prehearing conference  
25       statement and each of the attached exhibits of



1       that.

2               HEARING OFFICER WILLIAMS:  The SCONOX,  
3       how many --

4               MR. BOYD:  It's got, it's got,  
5       basically, it's just SCONOX and bio, that's all it  
6       is except for the text of my prehearing conference  
7       statement, basically laid out all the issues in  
8       dispute, some of which aren't air.

9               HEARING OFFICER WILLIAMS:  Mr.  
10       Wheatland.

11              MR. WHEATLAND:  Well, the testimony of  
12       Smallwood has already been identified as an  
13       exhibit and received into evidence.  That's the  
14       only document though for which there has been a  
15       witness available to sponsor it.

16              The other items that Mr. Boyd mentions  
17       are not exhibits because there has not been a  
18       witness offered to sponsor them.  And a pre-  
19       hearing conference statement is not an exhibit.  
20       So we would object to having any of those other  
21       documents identified or received into evidence.

22              MR. BOYD:  What about Bob Sarvey has got  
23       a whole list of exhibits that didn't have any  
24       witnesses sponsored.  I mean, you can't really  
25       have it both ways, can you?

1 HEARING OFFICER WILLIAMS: Well, why  
2 don't you do this --

3 MR. BOYD: I mean I'd be happy to just  
4 put in the NOx --

5 HEARING OFFICER WILLIAMS: The SCONOX  
6 white letter --

7 MR. BOYD: -- the SCONOX, and basically  
8 all the other documents are just -- went along to  
9 verify who the author of that paper was, and that  
10 kind of stuff. They're not really --

11 HEARING OFFICER WILLIAMS: Yeah, I have  
12 the SCONOX in as 7B, the SCONOX white letter, is  
13 in as 7B.

14 MR. BOYD: The only thing left really is  
15 the actual text of the prehearing conference  
16 statement, and I don't know if that has to be made  
17 an exhibit or not. I know it's part of the  
18 record --

19 HEARING OFFICER WILLIAMS: Do you have  
20 any objection?

21 MR. BOYD: -- as my prehearing  
22 conference statement.

23 HEARING OFFICER WILLIAMS: Do you have  
24 any objections to the SCONOX white paper?

25 MR. WHEATLAND: Yes, there has been no

1 witness for that white paper. But he can submit  
2 it as public comment. But, there is no witness  
3 for that paper, there is no one for us to cross-  
4 examine.

5 MR. BOYD: I actually cross-examined,  
6 both of the witnesses that I cross-examined were  
7 cross-examined on that SCONOX white paper. So --

8 MR. WHEATLAND: Well, of course, the  
9 difference is that you may use it to ask them a  
10 question about it, but there has been no witness  
11 that we can ask about that to establish --

12 MR. BOYD: I did offer up a witness as  
13 well, on SCONOX, but informed the Committee at the  
14 time that I didn't have, my organization doesn't  
15 have the resources to hire that witness. And  
16 offered -- and I asked staff if they would do so  
17 and they declined.

18 HEARING OFFICER WILLIAMS: How about we  
19 receive it for identification.

20 MR. BOYD: That's fine.

21 HEARING OFFICER WILLIAMS: And --

22 MR. BOYD: You can do whatever you want  
23 with it, I just want, you know, I'm giving you  
24 every opportunity to --

25 PRESIDING MEMBER KEESE: Okay, okay.

1 MR. BOYD: -- do whatever you think is  
2 right, okay, but I don't want you to ignore it,  
3 because --

4 PRESIDING MEMBER KEESE: We're not going  
5 to ignore it.

6 (Laughter.)

7 PRESIDING MEMBER KEESE: We're going to  
8 take it, and we're going to --

9 HEARING OFFICER WILLIAMS: We're going  
10 to work with it.

11 PRESIDING MEMBER KEESE: -- work with it  
12 and we're going to work with it --

13 (Parties speaking simultaneously.)

14 PRESIDING MEMBER KEESE: -- we're going  
15 to work with it in the light of the comments that  
16 were made by staff and San Joaquin, and --

17 MR. BOYD: Okay, now, the last question,  
18 we are going to get to do the public --

19 PRESIDING MEMBER KEESE: We're going to  
20 try to do the public health right now, --

21 MR. BOYD: Okay, good.

22 PRESIDING MEMBER KEESE: -- and  
23 hopefully we can do it real quickly.

24 MR. BOYD: Yeah, I only have one  
25 question, I guess.

1               PRESIDING MEMBER KEESE:   Okay.

2               MR. SARVEY:   A couple brief public  
3       comments between air and public health?

4               PRESIDING MEMBER KEESE:   Well, let us --  
5       if you don't mind, let us just, this is going to  
6       hopefully take two minutes.   Okay?   Hopefully.

7               MS. DeCARLO:   Staff's witness for public  
8       health is Obed Odoemelam, and he needs to be sworn  
9       in.  
10      Whereupon,

11              OBED ODOEMELAM  
12      was called as a witness herein, and after first  
13      having been duly sworn, was examined and testified  
14      as follows:

15              MS. DeCARLO:   Is everyone willing to  
16      stipulate to his qualifications?

17              MR. BOYD:   Yes, we are.

18              PRESIDING MEMBER KEESE:   Mr. Sarvey, do  
19      you stipulate to his qualifications?

20              MR. SARVEY:   Sure.

21              MS. DeCARLO:   Okay, he's available for  
22      cross-examination.

23              PRESIDING MEMBER KEESE:   In order.

24              HEARING OFFICER WILLIAMS:   Just to make  
25      it clear, staff, you stipulate to the testimony

1       that was provided in the -- applicant, you  
2       stipulate to the testimony that was provided in  
3       the final staff assessment?

4               MR. WHEATLAND:  Yes, that's correct.

5               HEARING OFFICER WILLIAMS:  Okay, do you  
6       have any questions?

7               MR. WHEATLAND:  No questions.

8               HEARING OFFICER WILLIAMS:  Okay.

9               MS. DeCARLO:  Let me just clarify.  Mr.  
10       Odoemelam, are you sponsoring staff's testimony  
11       for public health?

12              DR. ODOEMELAM:  Yes, I am.

13              HEARING OFFICER WILLIAMS:  That  
14       testimony will be received.  And, applicant, are  
15       you going to sponsor your testimony as well?

16              MR. WHEATLAND:  Yes, the parties have  
17       previously indicated to us that they would  
18       stipulate to the admission of our testimony, and  
19       had no questions for our witness, so I would move  
20       exhibit 4H into evidence.

21              HEARING OFFICER WILLIAMS:  Any  
22       objection?

23              MS. DeCARLO:  No objection.

24              HEARING OFFICER WILLIAMS:  Received.  So  
25       we've got both applicant's and staff's testimony

1 in on public health. Staff, you were going to  
2 offer up the witness?

3 MS. DeCARLO: Yes, he's available for  
4 cross-examination.

5 HEARING OFFICER WILLIAMS: Okay, Mr.  
6 Sarvey.

7 CROSS-EXAMINATION

8 BY MR. SARVEY:

9 Q Yes. In your analysis, did you consider  
10 the existing of cancer risk in San Joaquin County?

11 A Well the risk in the County should be  
12 seen as part of the background risk of every human  
13 being, which is one in four, 250,000 in 1,000,000.  
14 So what we're dealing with here is the .086 of .96  
15 in a million that this project is supposed to add  
16 to that background risk of 250,000 in 1,000,000.

17 Q In your evaluation did you recognize the  
18 fact that the San Joaquin County is in the 90 to  
19 100 percentile in added cancer risk from hazardous  
20 air pollutants?

21 A Well, we don't know the contribution of  
22 hazardous materials to the very high background  
23 risk of the average individual.

24 Q Did you consider in your evaluation of  
25 health hazards that the San Joaquin County or San

1       Joaquin Valley has a 13 percent asthma rate?

2           A     Yes, it's not unlike other areas in the  
3       state. The cases of asthma are increasing, but we  
4       don't know what those are. But we do regulate  
5       certainly uniformly throughout the state using the  
6       same exposure, using the same methods.

7           So it doesn't matter where it is, we are  
8       making sure that the incidence of new asthma cases  
9       are reduced throughout the state uniformly.

10          Q     So the 13 percent asthma rate in the San  
11       Joaquin Valley makes no difference in relation to  
12       your assessment of the project?

13          A     It makes a difference inasmuch as it is  
14       part of the nationwide trend towards more asthma.  
15       But, as you probably know, we don't really know  
16       what is responsible for this. All the health  
17       agencies are doing is to make sure that we are can  
18       eliminate sources, public exposure, as much as  
19       possible; but you can't -- the assessment and  
20       regulation is uniform throughout the state.

21          Q     So your assessment of no significant  
22       impact, is it conditioned on the staff's required  
23       mitigation package being implemented? Air quality  
24       mitigation package.

25          A     The thing to remember is that we don't



1 know what causes the asthma cases. So to the  
2 extent that these are the main causes of asthma  
3 are really not known. We can't point to any  
4 environmental air pollutants that's responsible  
5 for the high rates, either here in this valley, or  
6 anywhere else.

7 Q So you don't know what the causes of  
8 asthma are, is that your testimony?

9 A We don't know the reasons for the high  
10 uptake in asthma. We have ideas, and to the  
11 extent that we can identify air pollution in  
12 general, as a classification, but not any one  
13 particular one.

14 We establish rules for controlling as  
15 much as possible uniformly throughout the state  
16 and the whole nation.

17 Q So if this facility were to increase air  
18 pollution in this area, would you expect an  
19 increase in asthma?

20 A I couldn't tell you that, because as I  
21 said, the main causes of asthma are really poorly  
22 understood.

23 Q So essentially, you have no health risk  
24 assessment for asthma, since it's not understood,  
25 is that correct?

1           A     No, that's not what I said. To the  
2     extent that we don't know the causes -- we know  
3     what could cause asthma, something like air  
4     pollution. So we try to regulate all classes of  
5     air pollution by specifying the same control  
6     equipment uniformly.

7                     But I couldn't tell you that if you site  
8     this project here that so many increases asthma,  
9     because asthma causes are very complex. There are  
10    socioeconomic factors and so on. So we can't tie  
11    them to any one source, from any place, either in  
12    the Valley or throughout the country.

13           Q     So an increase in air pollutants in your  
14    opinion would not correlate to an increase in  
15    asthma? I'll just ask you one more time, and I'll  
16    let it go.

17           A     Asthma is one of the endpoints that are  
18    considered in setting the air pollution standards.  
19    So to the extent that analysis is intended to  
20    insure that exposures are maintained within limits  
21    that don't cause health effects, we think that we  
22    are helping protect against asthma and other  
23    diseases that are related to air pollution.

24                     MR. SARVEY: Thank you. I'm all done.

25                     PRESIDING MEMBER KEESE: Mr. Boyd.

1                   MR. BOYD: Well, you got him nice and  
2 ready for my question.

3                   CROSS-EXAMINATION

4 BY MR. BOYD:

5           Q     So could you say that there has been no  
6 cause-and-effect relationship established  
7 scientifically between the risk of asthma and air  
8 pollutants?

9           A     There are cause-and-effect  
10 relationships, but they are very poorly  
11 understood.

12          Q     Okay. I want to read a real short  
13 statement, and then -- which isn't a statement --  
14 I'm not stating opinion, I'm just going to quote  
15 something, and then ask my question which is --  
16 this is from the January 1998 Wingspread statement  
17 on what's called the precautionary principle.

18                "When an activity raises threats of harm to  
19 human health or the environment,  
20 precautionary measures should be taken even  
21 if some cause-and-effect relationships are  
22 not fully established scientifically."

23                Does your testimony on public health and  
24 health risk assessment performed comply with the  
25 requirements of the precautionary principle, that

1       when an activity raises threats of harm to human  
2       health or the environment, precautionary measures  
3       should be taken even if some cause-and-effect  
4       relationship are not fully established  
5       scientifically, and what precautionary measures  
6       have you proposed?

7           A     Well, the analysis the regulatory  
8       agencies conduct and whose guidelines were used  
9       for this project are indeed the essence of this  
10      need to regulate in a lot of uncertainty.

11                This analysis had to do modeling, or  
12      establishing the concept for these numbers.  They  
13      are established with huge uncertainty factors so  
14      that we make sure that when we're not sure, we add  
15      uncertainty factors on uncertainty factors, so  
16      that we can regulate and make sure that a risk is  
17      not underestimated.

18                What we can tell about these risks is  
19      that there is so much conservative assumptions in  
20      it, that risks are very unlikely to be more, and  
21      indeed they could be zero.

22                So indeed, the approach, which is to  
23      apply uncertainty factors in light of uncertainty  
24      about the actual impacts.  It's the essence of the  
25      principle that you specified.

1           Q     So you're saying that you did use the  
2     precautionary principles in performing your health  
3     risk assessment. Is it possible that we could see  
4     like the text of your analysis so that we could  
5     see something that we could point to, so that we  
6     could say this is the measure? For example, you  
7     stated that your analysis was very conservative,  
8     as regards to, you know, it basically takes into  
9     account the worst case scenario for example.

10           That's a precautionary measure. Is  
11     there -- does your written testimony reflect that  
12     the precautionary principle was used and that  
13     precautionary measures were proposed?

14           A     I'll give you an example. The cancer  
15     risk, I think I noted that in my analysis, we  
16     assume that all animal carcinogens are human  
17     carcinogens also. We assume that the individual  
18     is exposed at the highest level possible, for 70  
19     years. We assume, again, that all cancers are  
20     additive, although we know that the potency is  
21     different.

22           So we have conservative assumptions to  
23     make sure that we do not over-estimate the risk.  
24     In fact, it's likely, as I said earlier, that this  
25     risk numbers can not be higher than we specified.

1           And given the uncertainty in the  
2           toxicological data and the way the underlying  
3           experiments are devised, the risks are very likely  
4           to be low, much lower, and, indeed, zero.

5           MR. BOYD:   Okay, thank you that's all of  
6           my questions.

7           PRESIDING MEMBER KEESE:   Thank you.   I  
8           think we've covered that issue.   That issue is  
9           closed.

10          HEARING OFFICER WILLIAMS:   Yes.  
11          Anything further from the applicant?

12          MR. WHEATLAND:   No, nothing further.

13          PRESIDING MEMBER KEESE:   Close that one?  
14          All right.

15          MS. SARVEY:   Is there public comment for  
16          public health?

17          PRESIDING MEMBER KEESE:   Yes, we're  
18          going to have a comment for public health now.   Do  
19          we have somebody else who wants to speak on public  
20          health?   Come forward.

21          MS. SARVEY:   I'll be brief.   Susan  
22          Sarvey.   I understand that you don't understand if  
23          any of this causes asthma.   And my only question  
24          is my daughter is a straight-A-student, and she  
25          just got a B in P.E. because she had a doctor's

1 note for a solid four weeks because she has  
2 costochondritis, aggravated by ozone and  
3 particulate matter in her chest lining. If that  
4 is not a direct health effect, what is?

5 PRESIDING MEMBER KEESE: Go ahead.

6 MS. MERCER: I'm going to make it kind  
7 of an overall comment. My name is Gail Mercer and  
8 I'm with the Northern California Electrical  
9 Construction Industry.

10 We represent over 140 electrical  
11 contractors and thousands of electricians in 11  
12 counties in northern California, including  
13 Alameda, Contra Costa and San Joaquin.

14 Many of our members live in that area  
15 that will be served by the East Altamont Energy  
16 Center. As members of the electrical industry we  
17 understand how important it is to have the  
18 infrastructure grow along with the housing and the  
19 accompanying growth in commerce and industry.

20 Without additional power plants the  
21 reliability of the electric supply would  
22 deteriorate. Many of our existing plants are  
23 aging and inefficient.

24 The proposed East Altamont Energy Center  
25 project uses high efficiency combustion turbine

1 technology and selective catalytic reduction.  
2 This means that the NOx emissions will be from 60  
3 to 90 percent less than the older generating  
4 facilities. The proposed facility will also use  
5 approximately 40 percent less fuel.

6 We cannot continue to rely on older,  
7 less efficient, dirtier power plants to provide  
8 for our growing needs.

9 PRESIDING MEMBER KEESE: Can you give me  
10 one second here?

11 MS. MERCER: Sure.

12 PRESIDING MEMBER KEESE: We will start  
13 tomorrow morning at 9:00. Thank you.

14 Thank you, proceed.

15 MS. MERCER: Sure. Due to the proposed  
16 usage of recycled water the East Altamont Energy  
17 Center would be an asset to the environment. The  
18 use of recycled water from Mountain House would  
19 divert water that otherwise would go back into the  
20 Delta.

21 We understand the importance of  
22 maintaining our environment. We believe that the  
23 East Altamont Energy Center has addressed this  
24 sensitive issue in numerous ways. And we urge you  
25 to approve this project.



1 Thank you.

2 PRESIDING MEMBER KEESE: Thank you. Do  
3 we have other public comment?

4 Hearing none, we will reconvene at 9:00  
5 tomorrow, 9:00 until 3:00. We will be closing at  
6 3:00.

7 (Whereupon, at 9:33 p.m., the hearing  
8 was adjourned, to reconvene at 9:00  
9 a.m., Tuesday, October 22, 2002, at this  
10 same location.)

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## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of October, 2002.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345